

Kenya

Bridging Ethnic Divides

A Commissioner's Experience
on Cohesion and Integration



GLOBAL
PLURALISM AWARD 2017

WINNER

Alice Wairimũ Nderitũ

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on Cohesion and Integration

Alice Wairimũ Nderitũ





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Dedication

For Benjamin M. Akuete
Without whom
This book would have remained
As a draft thought
In my mind

Foreword

I have had the privilege of following the sterling work on peace that has been the lifetime commitment of the remarkable Kenyan peacemaker, Alice Wairimũ Nderitũ. In 2017, Wairimũ won the Global Pluralism Award in recognition of her conflict mediation efforts in Kenya and other parts of the world. Before she took her service to the world, however, Wairimũ served as one of the pioneer commissioners of Kenya's National Cohesion and Integration Commission (NCIC) between 2009 and 2013.

When I served as UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Wairimũ was always available and often found opportunities in which we could support each other's work. I am therefore honoured and excited to be asked to write the foreword to the work of a colleague and friend whose commitment to the creation of a better world remains a source of inspiration to many people in various parts of the world.

Wairimũ has written an important book on ethnicity and ethnic discrimination that has continued to hobble African states and Kenya in particular, since its founding as a state. Kenya's poisoned legacy of politicised ethnic identities and ethnic mobilisations to win elections finally exploded into violence in 2007 following a dispute over presidential election results. The post-election violence that followed turned into Kenya's worst post-independence crisis of widespread ethnic violence that threatened to tear the country apart. That violence also heralded the establishment of various institutions and mechanisms for promoting better management of the country's ethnic and cultural diversity and to provide leadership on cohesion and integration in the country.

NCIC was the product of that dark period in Kenya's history. Wairimũ Nderitũ as one of the pioneer commissioners in the NCIC had a ringside seat in the establishment of that institution and in shaping the practice on how the Kenyan state would in future respond to incitement to ethnic discrimination and violence by politicians.

NCIC pioneered the practice of auditing the state of ethnic diversity in the civil service in Kenya, thus opening an important national conversation on inclusion and marginalisation in the country. NCIC is also remembered for summoning politicians to record statements and for issuing them with cessation notices for making inciting utterances.

The establishment of NCIC was the first serious attempt at addressing the question of ethnic divisions and conflict in post-independence Kenya. It should be remembered that right at independence in the 1960s, management of the ethnic diversity of the new Kenyan state was destined to be the defining test of how successful Kenya was going to emerge as a viable and stable nation-state. As a political and geographical entity, Kenya is a product of colonialism which brought under one administration a collection of various cultural and linguistic groups that had previously lived under separate forms of governance.

Colonialism did not create ethnic groups or ethnicity. Rather, what the colonial state did was to make ethnicity and race into political and legal categories that determined how individuals were to be governed and how rights were recognised, and resources allocated. Law and institutions of state solidified these racialised and ethnicised identities and made them part of the daily and official realities of African peoples.

The single most tragic failure of many post-independence states was to allow these ethnicised identities to remain and to gain new significance in the new states. Increasingly, many African countries found themselves struggling with the tensions of competing national and ethnic identities. In some countries, these tensions exploded into civil wars, while in others like Kenya, the tensions remained latent, constantly bubbling under the surface and occasionally bursting into episodes of violence. When these tensions flared into open violence after the presidential elections' dispute of 2007, the illusion of the country as an exception from the tragic story of many other African countries was violently put to rest.

Wairimũ Nderitũ and her fellow commissioners became the bearers of the difficult responsibility of guiding a traumatised country into conversations on the raw and painful subjects of prejudices, exclusion, marginalisation and discrimination. For a country that had for long chosen not to even discuss ethnicity “for the sake of peace and

unity” as its political leaders put it, this was not an easy task for the new commission. Moreover, the political and economic systems that had generated the tensions and precipitated the conflicts were to a large extent still in place. It is to the credit of this small team at the NCIC that they did not just succeed in placing the issues of ethnic exclusion, hatred and incitement into popular and policy debates, but also managed to innovate tools such as cessation notices to rein in the provocative utterances by politicians.

The challenges that NCIC faced and continues to experience in its efforts to promote cohesion and to prevent incitement to violence and discrimination are not unique to Kenya. Globally the questions of equality, diversity and cohesion continue to be at the centre of concerns over the health and future of free, open and democratic societies. In too many places, the world is experiencing growing hostility to diverse societies with migrants, refugees and minorities regularly subjected to institutional as well as social hostility and exclusion. Mechanisms and institutions such as the NCIC are important not just because of their mandate in sanctioning politicians for their divisive utterances but even more important in their role as the proverbial canary in the mine—warning us of the dangers of the poison of division, exclusion and incitement.

Wairimũ Nderitũ and her colleagues have played their role in a difficult environment as her reflections in this book attest. Wairimũ Nderitũ has recorded what is possible where individuals are committed to the mission of their mandate. Ultimately however, it should be remembered that management of diversity is about politics. Where politics and political leaders fail to provide the vision and policies to transform societies into a more inclusive community that celebrates diversity, there is only so much that institutions such as NCIC can do.

Dr Mutuma Ruteere

Former UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance

Preface

In early September 2009, I was sitting in a church in Ngong town, Kenya, watching with my family as my son Mark Nderitũ received the sacrament of confirmation. I was so proud of my son yet filled with trepidation. Just a few days before, my family had stood with me in the Chief Justice's chambers, watching as I was sworn in as a Commissioner of the Kenya National Cohesion and Integration Commission (NCIC), with the massive task of promoting peaceful coexistence between ethnic, religious and racial groups in a country fresh from the worst violence in living memory.

Away from the ceremony, my attention was drawn to a woman sitting next to me. She was very clean, her pale white dress, with several patches of cloth sewn over holes, falling in pleats around her. On closer examination, I noticed that white was not its original colour. It had faded patterns of green: many washes and the unrelenting African sun had taken away the original design. I pointed her out to my mother. But her dress was not the reason I asked my mother to look at the dress. She was barefoot, and her feet were scrubbed clean with pumice stone, but not enough to obscure the deep cracks in her heels.

I had in my previous work at the Kenya National Commission on Human Rights (KNCHR) travelled the width and breadth of Kenya. I had met people so poor than the word could describe. I had seen people so hungry that death seemed to be a favour. But this woman touched something in me. Maybe it was because she was the only shoeless person in the church. There were several open-air markets in Ngong area selling second-hand shoes and dresses, some of which cost less than a dollar. Why wasn't she having shoes and why was her dress so patched up?

My mother told me: "In your new job you will travel the world, and rub shoulders with important people, but it's a woman like this one you should be working for." It was a moment I would always carry with me. This woman would epitomise what I knew I had to stand for. I told my mother

I would indeed work for her, and keep an account of what I am doing, so that one day, others like her may know that my work was for their benefit.

I considered my appointment a privilege, an opportunity to serve my country. I had been working all over the country prior to Kenya's 2007-2008 violence, monitoring human rights violations. I had seen the looming conflict, heard the war drums, and lost sleep over the failure of politicians and the country at large to heed our warnings that there was going to be violence, and on a large scale.

When the violence began, I was again out in the field, capturing the stories of the unfolding horror that never seemed to stop. When I was appointed NCIC Commissioner in 2009, I promised myself that if at all I could help, Kenya would not go through electoral violence again. I did not know the extent to which I had committed myself to this undertaking until my son Mark later said to me: "Mama, in our literature class we are reading about someone like you. He concentrated so much on his work for the country that he forgot his family. But it's all right. I understand someone has to do what you do." Those words stung, and yet I carried on. Only when we prevented violence in the 2013 elections, and I could explain to him exactly what role I played to avert it, did I sit him down and apologise for being the parent who was not always there for him because of work.

This book is not a report of the work of the NCIC. It is a compilation of information I noted in my diary on a daily basis. It is therefore a personal account of how I spent four years in the service of the nation, initiatives that I either led or in which I actively participated, not a compilation of the work of the entire NCIC. It is my hope that others who worked with NCIC as well as what was called the "Agenda 4 Commissions" – the institutions set up by the Kofi Annan, Graca Machel and Benjamin Mkapa team to rebuild Kenya – will also write about their experiences, and the great work they did, so that those who come after us can build upon these endeavours.

This is my account. It is my account to the shoeless woman in the patched dress, and to all those who believed I could deliver, not least my family and the Parliamentary Committee on Administration of Justice and Legal Affairs that recommended my appointment to the crucial position of NCIC Commissioner.

Acknowledgements

This book has been a journey with friends who helped me to make tough choices on words, form and content. I am particularly and enormously indebted to two people; first, Benjamin M. Akuete to whom I tried out my ideas and whose persistent prodding produced the first and last draft. Second, is Jacqueline O'Neill whom I thank for the discussions, the patience and the encouragement not to ever give up on writing.

I spoke about my work at both the University of San Diego, California, USA and at the Woodrow Wilson International Centre for Scholars in Washington DC courtesy of the Joan B. Kroc Institute for Peace and Justice and the Institute for Inclusive Security (IIS). I was fascinated by the interest of the audience in Kenya. These two occasions provided the initial feedback that helped me put my thoughts together into a table of contents.

I am indebted to Benson Misco Shiholo, Murithi Mutiga and David Aduda for their professional and editorial assistance. Godfrey Mwampembwa (aka Gado), East Africa's most syndicated cartoonist, allowed me free use of all the cartoons he has published that bear ethnic connotations in the period that I write about. I am also grateful to Prof Olubayi Olubayi, the Friends of NCIC Dr Ozonnia Ojielo, Irungu Houghton, Professor Kimani Njogu, Duncan Okello and Professor Karuti Kanyinga. I made a promise to them to write this book. I am glad I have done it.

I am especially appreciative to the people whose support contributed in a large measure to make our work as NCIC possible and importantly, sustainable, such as the Nakuru Peace Process. I thank the Nakuru elders, especially the coordinators Mr Maina Muhia, the late Dr Solomon Wanguru and Mr Andrew Yatich; the women's chair, Professor Mary Kariuki, the community chairmen, Mr John Amukoye (Abaluhya), Dr Andrew Isse Ochoki (Abagusii), Mr Phillip Malonza (Akamba), Mr John Muyuri (Ameru), Mr Charles Ochieng Dullo (Luo), Mr Joseph Maetea Ole Naimunyi (Maasai), Mr Athman Masood (Mijikenda), Mr Charles Rono (Ogiek), Mr Abdulrehman Mohammed (Somali), Mr

Samuel Maigwa (Agikuyu), Mr Wilson Leitich (Kalenjin), and committee members Mr Joshua Toroitich and Mr Ndung'u Gaithuma.

I also thank the following people from the Centre for Humanitarian Dialogue (HD) for their support in Nakuru; David Gorman, Andrew Hadley and Joyce Neu, and most of all to Meredith Preston-Mchgie who heads HD's African regional office in Kenya.

I wish to also thank Lt. General Daniel Opande (Rtd.), deputised by Mr Wilfred Kiboro, who led our team of the Concerned Group of Citizens in working behind the scenes during the electoral period to avert violence through confidential meetings with and between the leadership of the main political parties as well as our independent constitutional bodies.

We worked very hard to found Uwiano Platform for Peace, which has proven to be one of Kenya's enduring legacies in conflict prevention with the late SK Maina, Dr Ozonnia Ojielo (a Nigerian who works for UNDP), Mutuku Nguli, Dickson Magotsi, and Peter Mwamachi.

I also wish to thank Maurice Odhiambo Makoloo and Irungu Houghton for the work we did together to ensure inclusive practices.

So many people helped me to produce this book and I cannot mention all by name, but I remain eternally grateful to them. Some of their names appear in the book and the footnotes; people that I worked with in NCIC or partnered with in the programmes that I headed or played an active role in.

I served at the NCIC between September 2009 and September 2013 during which period a number of people I cared for died. I acknowledge the spiritual strength they gave me. Their memories and the battles they fought in their last days gave me great emotional momentum to complete this book. They include Dekha Ibrahim Abdi, a woman peacemaker and friend who died on 14th July 2011, after a week of hanging on to life by a thread after a road accident. Dekha lived by the maxim that *an egg, like peace, is delicate and fragile, but given the right conditions, it gives life*. My role model, Prof. Wangari Maathai, Kenya's and Africa's first black woman Nobel Laureate, who died on 25th September 2011, said words that gave me direction in life vide, *"Be a solution provider. You must find one thing that you really love, that you can work towards solutions for, with all your mind, heart and soul. I found my love for trees, find something."* I found cohesion and integration.

Mary Anyango Onyango, the vice chair at the NCIC, was a confidant and friend. Our disagreements were as strong as our agreements. Everything that Mary and I put our hands together on worked. Mary died on 31st March 2012. She often said, *“Ethnic divisions in Kenya, and the cancer that ravages my body, both need a cure.”* These words, though said in jest, have deep meaning for Kenya. Ethnic divisions have wasted Kenya away, like a cancer determined to take away all that is healthy and leave only what can be buried.

Paulina Wairimũ Nderitũ – my paternal grandmother, for whom I am named after, was a strong, proud and courageous woman, legendary for her hard work ethic. My character is often attributed to her genes. She was born in 1912 and died in June 2013. My paternal grandfather, Andrew Nderitũ Maritũ, called out to my grandmother often after she died, asking her to come back for him, and she did. He followed her closely, dying the following month. My grandfather was a veteran fighting for the British in both World Wars and a seven-year Mau Mau detainee in Manyani Prison, Kenya. He was born in 1900 and died in July 2013.

SK Maina, a mentor and friend, a man full of wisdom, considered the father of Kenya’s peace building world died on 9th August 2015. He and I served as Uwiano Platform for Peace, first co-chairs. He believed in my ideas and trusted me absolutely.

Finally, my family’s support has been indispensable. During the years of intensive manuscript writing, my son Mark Nderitũ, my mother and father Vincent and Edith Nderitũ, were a constant source of inspiration and support. My siblings Andrew Nderitũ, Patrick Kĩbuĩ, Antony Wachira, Simon Gĩkiri, Shirũ Nyingi, Cecilia Wahinga, Tom Kĩhumba, Vivianne Mũthoni, Consolata Wakonyo and Albert Nderitũ stood in for me often, even to fulfil parental duties.

Special thanks go to my family and in particular my son, Mark Nderitũ, who had to bear with my absence to get this book done. To them, I say thank you, *Asante Sana*.

Alice Wairimũ Nderitũ
February 2018

Acronyms & Abbreviations

ACHPR	– African Commission on Human and People’s Rights
ACORD	– Agency for Cooperation and Research in Development
AG	– Attorney General
AGOA	– African Growth and Opportunity Act
ALIKO	– Afraha, Lanet, Ingobor, Kapkures and Ogilgei
AMA	– Akamba Members Association
AMWIK	– Association of Media Women in Kenya
AU	– African Union
BVR	– Biometric Voter Registration
CAR	– Central African Republic
CBOs	– Community Based Organisations
CC(s)	– County Commissioner(s)
CDC	– Centres for Disease Control and Prevention
CDF	– Chief of Defence Forces
CDF	– Constituency Development Fund
CEO	– Chief Executive Officer
CEWARN	– Conflict Early Warning and Early Response Mechanism
CID	– Criminal Investigations Department
CIPEV	– Commission of Inquiry on Post-Election Violence
CoE	– Committee of Experts on Constitutional Review
CPA	– Comprehensive Peace Agreement
CSO(s)	– Civil Society Organisation(s)
DC(s)	– District Commissioner(s)
DDR	– Demobilisation, Demilitarisation and Re-Integration
DFID	– Department for International Development
DP	– Democratic Party (of Kenya)
DPC	– District Peace Committee
DPP	– Director of Public Prosecutions
DRC	– Democratic Republic of Congo
EAA	– East African Association
EAC	– East African Community
EATUC	– East African Trade Union Congress
ECK	– Electoral Commission of Kenya

ECOWAS	– Economic Community of West African States
EU	– European Union
FAR	– Force Arme democratique
FBOs	– Faith-Based Organisations
FGM	– Female Genital Mutilation
Ford-K	– Forum for the Restoration of Democracy in Kenya
FPK	– Federal Party of Kenya
FYM	– Forty Youth Movement
GCA	– GEMA Cultural Association
GDC	– Geothermal Development Company
GEMA	– Gikuyu, Embu and Meru Association
GTZ	– Germany Development Agency
HODI	– Horn of Africa Development Initiative
ICC	– International Criminal Court
ICERD	– International Convention on the Elimination of Racial discrimination
ICT	– Information Communication Technologies
IDPs	– Internally Displaced Persons
IEDs	– Improvised Explosive Devices
IG	– Inspector General (of Police)
IGAD	– Inter-Governmental Authority on Development
IGCLR	– International Conference on the Great Lakes Region
IIBRC	– Interim Independent Boundaries Review Commission
IICDRC	– Interim Independent Constitutional Dispute Resolution Court
IIEC	– Interim Independent Electoral Commission
IJR	– Institute for Justice and Reconciliation
IPJ	– Institute of Peace and Justice
IPPDS	– Integrated Personnel and Payroll Data System
IREC	– Independent Review Commission
JSC	– Judicial Service Commission
KACC	– Kenya Anti-Corruption Commission
KADU	– Kenya African Democratic Union
KAMATUSA	– Kalenjin, Maasai, Turkana and Samburu
KANU	– Kenya African National Union
KAU	– Kenya African Union

KBC	– Kenya Broadcasting Corporation
KCA	– Kikuyu Central Association
KCB	– Kenya Commercial Bank
KDF	– Kenya Defence Forces
KenGen	– Kenya Electricity Generating Company
KEPSA	– Kenya Private Sector Alliance
KHRC	– Kenya Human Rights Commission
KIA	– Kenya Institute of Administration
KICC	– Kenyatta International Convention Centre
KICD	– Kenya Institute of Curriculum Development
KIE	– Kenya Institute of Education
KKK	– Kikuyu, Kalenjin and Kamba
KLFA	– Kenya Land and Freedom Army
KLRC	– Kenya Law Reform Commission
KMPPDU	– Kenya Medical Practitioners, Pharmacists and Dentists Union
KNC	– Kenya National Congress
KNCHR	– Kenya National Commission on Human Rights
KNDMF	– Kenya National Drama and Music Festival
KNDR	– Kenya National Dialogue and Reconciliation
KNUT	– Kenya National Union of Teachers
KPLC	– Kenya Power and Lighting Company
KPSA	– Kenya Private Sector Alliance
KRA	– Kenya Revenue Authority
KSG	– Kenya School of Government
KSSHA	– Kenya Secondary School Heads Association
KTB	– Kenya Tourism Board
KTN	– Kenya Television Network
KUPPET	– Kenya Union of Post-Primary Education
LGAs	– Local Government Authorities
LSK	– Law Society of Kenya
MCAs	– Members of County Assemblies
MCK	– Media Council of Kenya
MoJNCCA	– Ministry of Justice, National Cohesion and Constitutional Affairs
MOU	– Memorandum of Understanding

MPs	– Members of Parliament
MRC	– Mombasa Republican Council
MUHURI	– Muslims for Human Rights
NACADA	– National Authority for the Campaign Against Alcohol and Drug Abuse
Narc	– National Alliance of Rainbow Coalition
Narc-K	– National Alliance of Rainbow Coalition (Kenya)
NCCK	– National Council of Churches of Kenya
NCGD	– National Commission on Gender and Development
NCIC	– National Cohesion and Integration Commission
NDP	– National Development Party
NEPAD	– New Partnership for Africa's Development
NFD	– Northern Frontier District
NGO(s)	– Non-Governmental Organisation(s)
NLC	– National Land Commission
NMG	– Nation Media Group
NPPPP	– Northern Province People's Progressive Party
NRM	– National Resistance Movement
NSC	– National Steering Committee (on Peace Building and Conflict Management)
NSIS	– National Security Intelligence Service
OCHA	– Coordination of Humanitarian Affairs
OCPD	– Officer Commanding Police Division
OCS	– Officer Commanding Station
ODM	– Orange Democratic Movement
ODM-K	– Orange Democratic Movement (Kenya)
OLF	– Oromo Liberation Front
ONLF	– Ogaden National Liberation Front
PDE(s)	– Provincial Director(s) of Education
PEV	– Post-Election Violence
PNU	– Party of National Unity
POA	– Party of Action
PSC	– Public Service Commission
RBK	– Restore and Build Kenya
RC(s)	– Regional Coordinator(s)
RPF	– Rwandan Patriotic Front

SAHRC	– South African Human Rights Commission
SDA	– Seventh Day Adventist
SID	– Society for International Development
SLDF	– Sabaot Land Defence Forces
SPK	– Shirikisho Party of Kenya
SPLM/A	– Sudan Peoples’ Liberation Movement/Army
TFG	– Transitional Federal Government
THA	– Taita Hills Association
TJRC	– Truth, Justice and Reconciliation Commission
TNA	– The National Alliance
TRC	– Truth and Reconciliation Commission (South African)
UDF	– United Democratic Front
UN	– United Nations
UNDP	– United Nations Development Programme
UNICEF	– United Nations Children’s Fund
UNLA	– Uganda National Liberation Army
UNSC	– United Nations Security Council
URP	– United Republican Party
USA	– United States of America
USAID	– United States Agency for International Development
USSR	– Union of Soviet Socialist Republic
VOA	– Voice of America
VOK	– Voice of Kenya
YKA	– Young Kavirondo Association

Other titles by Alice Wairimũ Nderitũ

1. *Beyond Ethnicism: Exploring Ethnic and Racial Diversity for Educators* (2015) approved by Kenya Institute of Curriculum Development as Curriculum support material for teacher training colleges in Kenya
2. *Catherine Ndereba: The Authorised Biography* of a Marathon World Record holder (2016)
3. *Mũkami Kĩmathi: Mau Mau Woman Freedom Fighter* (2017)
4. Minding the Gap, African Conflict Management in a Time of Change (Book chapter), by Pamela Aall and Chester A. Crocker (eds)

Introduction

Ethnicity is powerful. By itself, ethnicity does not create or destroy a nation. How to exercise it, does construct or destruct our lives. False homogenisation might destroy us, as would the misuse of a pluralistic system. The outcome will depend on how we nurture and enliven the strengths of our system.

– Phillip Q. Yang

Kenya eats sleeps and dreams “Tribe”. “Tribe” is the determining factor for many social, economic and especially political decisions in Kenya. If I may paraphrase W E B Du Bois who said that “the problem of the twentieth century is the problem of the colour-line,”¹ in Kenya, the problem of the twenty first century is the problem of “tribe”. He might as well have been speaking about Kenya for “tribe” is to Kenya what “race” is to America. Due to the history of a Kenya that is defined by ethnic divisions, “tribe” has become the organising principle of politics.

“Tribe” permeates every aspect of Kenyan life. At many family dinners, market places, schools and other social and cultural places, Kenyans speak, mostly negatively, about each other’s ethnic communities. Since ethnic tensions have been part and parcel of life in the country, and because nothing had been done for years to address that, it only required a small trigger to explode into violence in 2007-2008.

Kenya’s obsession with “tribe” was for many years cloaked in nice sounding phrases, with its ethnic tensions spoken of in terms such as “community clashes,” “cattle rustling,” “resource based conflict,” “sporadic,” “rare” and “nothing in comparison to its neighbours.” For many years, Kenya had been the island of refuge for people from neighbouring countries in conflict such as Somalia, Uganda, Rwanda, Sudan and the Democratic Republic of Congo (DRC).

Various peace agreements were signed in Kenya or led by Kenyans that included the Comprehensive Peace Agreement (CPA) in 2005 between the Government of the Republic of the Sudan and the Sudan Peoples’ Liberation Movement/Army (SPLM/A) that brought to an

end 22 years of protracted and costly civil war. In 1985, Kenya also mediated between Yoweri Museveni (who would become the President of Uganda in 1986) and leader of the National Resistance Movement (NRM) and General Tito Okello, head of the Uganda National Liberation Army (UNLA). The 2004 Transitional Federal Government (TFG) that provided the first Government for war-torn Somalia was also midwived by Kenya. Many of the DRC peace agreements were and continue to be signed in Kenya.

The perceived absence of armed conflict since independence from Britain in 1963 created an illusory sense of security that Kenya was a nation at peace. The conflicts in neighbouring countries masked the local level community and cross-border violent conflicts that have existed for many years in Kenya. These conflicts manifested themselves mostly as political, economic, environmental and natural resources-related conflicts, also as land and inter-ethnic clashes. With the introduction of multi-party politics in 1991, the conflicts acquired much wider political and ideological dimensions, giving rise to protracted and institutionalised waves of ethnic and land clashes. The illusion of peace ended in the 2007-2008 violence that rocked the country after the elections.

The extensive scale of conflict that occurred following the 2007 elections, and the loss of lives, property and livelihoods, shocked the world. At the heart of the conflict were two men competing for the presidency: Mwai Kibaki from the Kikuyu ethnic community, and Raila Odinga from among the Luo. The ethnicity of the two candidates had great significance in the race, as Kenyans have been divided along ethnic, class and religious lines ever since the country's independence in 1963. The ethnic divisions have consistently hindered the formation of a national identity.

Political developments in Kenya have taken place within a national context in which a small number of families in three of Kenya's forty-two ethnic communities, the Kikuyu, Luo and Kalenjin, have dominated the political scene throughout Kenya's post-independence history. Kenya's first president, the late Jomo Kenyatta, was Kikuyu, while his first Vice President, also late, Jaramogi Oginga Odinga, was Luo. Kenya's second president, Daniel arap Moi, is Kalenjin, and Mwai

Kibaki, Kenya's third president, is Kikuyu. Raila Odinga the former Prime Minister and son of the first Vice President, Jaramogi Oginga Odinga is Luo. Uhuru Kenyatta, Kenya's fourth president and the son of the first president, is Kikuyu. Deputy President William Ruto is Kalenjin. Two of Moi's sons have also been prominent politicians in the Rift Valley: Gideon Moi served as the Senator of Baringo County, and Raymond Moi MP for Rongai.

The tensions between these various leaders, in particular between the Kenyatta and Odinga families, created a powerful narrative in Kenyan history. Jomo Kenyatta and Jaramogi Oginga Odinga underwent acrimonious fallout that has sustained at least three generations of mistrust and hatred between their respective ethnic communities, the Kikuyu and the Luo. However, the mistrust between the ethnic communities was briefly buried in 2002, when Raila Odinga, a Luo, and Mwai Kibaki, a Kikuyu, teamed up to trounce Uhuru Kenyatta, a Kikuyu. When Uhuru Kenyatta graciously conceded defeat, the two communities edged even closer, but not for long. The mistrust between the two ethnic communities intensified once again when Odinga and Kibaki fell out after the elections and the flawed implementation of the MoU between them.²

President Daniel arap Moi was considered to be hostile to the Kikuyu and Luo particularly in the 1980s and 1990s, and this was seen as the reason why the ethnic clashes of the 1990s mainly targeting the Kikuyu and Kisii both regarded as settler communities in the Rift Valley, were allowed and, in some cases assisted, by state organs. One of the reports I relied on for background information in writing this book is The Commissions of Inquiry Act (Cap. 102) Report of the Judicial Commission Appointed to Inquire into Tribal Clashes in Kenya, chaired by Justice A. M. Akiwumi, otherwise known as "The Akiwumi report," after its chair, a Ghanaian Judge of the High Court of Kenya.

The Akiwumi Commission appointed by then President Moi in 1991 confirmed this assertion and also characterised the Kalenjin and the Kikuyu as more or less traditional rivals. The pull of the "tribe" and the hold of politicians over their ethnic communities are unexplainable, even by Kenyans themselves given that many go through a lifetime

of siding with “their” politicians without ever meeting or in any way benefiting from them.

In December 2007, what appeared to have started as protests against perceived flawed results of the general elections assumed an ethnic dimension that quickly turned ugly. President Mwai Kibaki and Raila Odinga’s supporters engaged in an orgy of violence, pitting ethnic communities against each other, unprecedented by Kenyan standards. Violence had preceded every Kenyan election since the restoration of multi-party politics in 1991, particularly in the Rift Valley, Western and Coast provinces but never on such a scale.

Political parties mobilise around the big five ethnic communities, the Kikuyu, Luhya, Kalenjin, Luo and Kamba. Minority ethnic communities have been side-lined from the country’s top political leadership, yet they are Kenyan. In Kenya’s history, hunter-gatherer groups, later replaced by the agro-pastoralist Cushitic speakers such as the Somali and Borana from the Horn of Africa were among the first to inhabit modern day Kenya. Other Nilotic-speaking pastoralists migrating from present day South Sudan who include the Samburu, Luo, Turkana and Maasai followed them. Bantu speaking farmers came next, originating from West Africa along the Benue River in what is now eastern Nigeria and western Cameroon. These Bantu groups include the Kikuyu, Luhya, Kamba, Kisii, Meru, Embu, Mbeere, Pokomo, Mijikenda, among others. While groups like the Kikuyu, Luo, Kamba and Kisii are largely homogeneous; the Luhya, Kalenjin and Meru are an amalgamation of several sub-groups with variations in dialect.

Arab and Asian traders had begun visiting the Kenya Coast around the 1st century AD resulting in several Arab and Asian settlements and the introduction of Islamic religion. The Coast became a melting point for various cultures and communities that worked as ironmongers, farmers, hunters and fishermen. The Arabs established many autonomous city-states on the Kenyan Coast that included Mombasa, Malindi and Zanzibar. Trade by the Arabs particularly, in ivory and slaves, defined the Kenyan Coast. The intermarriage with the local Bantus resulted in a new culture and language, Kiswahili. The construction of the railway line from Mombasa to Uganda brought in workers from India. Their descendants remained in Kenya.

The artificial territorial boundaries created by the Berlin Conference of 1884-85 meant that within Kenya, there now were a diversity of people, with different histories, languages and cultures. However, geographic boundaries adopted with names of ethnic groups began to define traditional homelands during the colonial period. They continue to do so.

Ethnic competition and conflict is about resources, jobs, government tenders and contracts, land and property, and access to opportunities such as found in good educational institutions. “Tribe” confers privileges on a select few individuals and communities that those not on the receiving end compete for. In this equation, politics is very important, because the representatives of the ethnic community control the resources from which those around them benefit. The people from the ethnic community of the politicians who have gained power support them for this very reason. They gain privilege and access to resources, with the state as a willing player in these ethnic shenanigans. The state sets the terms of competition through how resources are distributed, and it is this that led to the view that politicians had to fight for power by mobilising their ethnic communities.

The culture of zero-sum ethnic bidding is attributed to many factors, including the divide and rule policies of the colonial administrators; the forcible alienation and appropriation of community and group lands by the colonial and subsequent post-colonial governments; the unequal distribution of national resources; the suppression of dissenting voices; and the selective appointment to public offices.

Much of what happened in the 2007-2008 conflicts had its root causes in the belief that the power of the presidency translated into the power – and wealth – of the “tribe”. Resource availability for the “tribe” followed the presidency. Inequalities followed in a similar fashion, with the losing “tribe” unrepresented at the highest levels in government.

I use the word “tribe”, in quotes for a reason. Kenya’s most famous writer, Ngũgĩ wa Thiong’o, in his 1987 classic *Decolonising the Mind*, presents compelling arguments for dropping the word “tribe” (and, therefore, the word “tribalism”) in describing Africans and African situations. Ngũgĩ argued that the use of the word “tribe” in the English language exclusively for reference to Africans and other dark-skinned

indigenous peoples (and not to Europeans) is racist. The historian Christopher Ehret (in his influential 2002 book *The Civilisations of Africa*) agreed with Ngũgĩ and called for an end to the use of the word “tribe” in enlightened discussions about Africa and Africans. Ehret argues that “tribe” is a “loaded term” that promotes prejudice against Africans, and carries connotations that imply Africans are uncivilised and savage. The irony is that it is widely used in Kenya, even in the mainstream media.

In this book, I use “ethnic communities” instead of “tribe”; and in describing negative impact, I use “ethnicism” instead of “tribalism”. However, I do not change the use of “tribe” or “tribalism” when quoting work by others. Ethnicism has been defined as “a form of nationalism wherein the nation is defined in terms of ethnicity or race”. Ethnicism is also defined as an ideology, focusing on the superiority of one generally narrow ethnic or national group. The term “ethnicism” in this book therefore replaces the following two terms: “tribalism” and the increasingly popular phrase “negative ethnicity”, because ethnicity cannot be either negative or positive. Ethnicity is simply a form of identity. And every human being adopts several identities.

Other definitions of ethnicism include these: “Ethnicism incorporates all ethnocentric attributes but carries them to a logical hypothesis and conclusion of politicisation”; “it exists only within a conglomerate political structure consisting of diverse ethnic groups and characterised by a consciousness and commonality of a distinct group association”; “a philosophical and conceptual analysis of a group’s ethnicity and its ethnocentric favour reveals to us, therefore, that there are special groups which, within a larger cultural and social system, are accorded a special status in terms of their complexities of traits, either drawn from the religious beliefs and linguistic construct, cultural complexities, geographical location, distinction in skin pigmentation, etc.”³

To the best of my knowledge, there has been no legal interpretation in regard to whether the word “tribe” or “tribalism” should be used in Kenya or not. The Akiwumi report represents one of Kenya’s best efforts at documenting ethnic related violence, but sustains the confusion on what the right term should be by referring to both tribal

and ethnic clashes as meaning the same thing. “Tribe” and ethnic group are also given the same treatment with no differentiation between the two and are often used interchangeably in the report. Kenyan newspapers use the word “tribe”, and so do official documents such as the census enumerators’ manual and various Acts of Parliament. Yet it still raises eyebrows when used by a non-African, especially in the academic world.

Some of the discomfort has to do with the way the word “tribe” is defined in dictionaries such as “tribe |ˈtrɪb| informal: a large number of people or animals”. *The Oxford Advanced Learner’s Dictionary* defines *tribe* as a *noun* pronounced **traɪb**; **traɪb** and gives the following meanings for it: 1. (*sometimes offensive*) (in developing countries) a group of people of the same race, and with the same customs, language, religion, etc., living in a particular area and often led by a chief *tribes living in remote areas of the Amazonian rainforest*. 2. (*usually disapproving*) a group or class of people, especially of one profession. *He had a sudden outburst against the whole tribe of actors*. 3. (*biology*) a group of related animals or plants, *a tribe of cats*. 4. (*informal or humorous*) a large number of people. *One or two of the grandchildren will be there, but not the whole tribe*.

The British English version of the *Cambridge Dictionary* gives the definition of *tribe* as a 1. Noun [C, + sing/pl verb] pronounced /**traɪb**/ as a: Group of people, often of related families, who live together, sharing the same language, culture, and history, especially those who do not live in towns or cities: Examples, *A tribe of Amazonian Indians, the Maasai tribe*. 2. *Informal* a large family or other group that someone belongs to: *We’ve invited Carol’s sisters and brothers and their spouses and children – the whole Cassidy tribe*. The American English version of the *Cambridge Dictionary’s* definition of *tribe* is that of a: *noun* [C] pronounced /**traɪb**/ *a group of people, often of related families, who live in the same area and share the same language, culture, and history*: Example: *She has studied Native American tribes from Mexico to Maine*.

The Merriam-Webster Dictionary describes “tribe” as noun \ˈtrɪb: 1. *A group of people that includes many families and relatives who have the same language, customs, and beliefs*. 2. *A large family*. 3. *A group of people who have the same job or interest*.

It gives a full definition of tribe as: 1. *A social group comprising numerous families, clans, or generations, together with slaves, dependents, or adopted strangers.* 2. *A political division of the Roman people originally representing one of the three original tribes of ancient Rome.* 3. *A group of persons having a common character, occupation, or interest.* 4. *A category of taxonomic classification ranking below a sub-family; also: a natural group irrespective of taxonomic rank <the cat tribe> <the rose tribe> and gives as examples of tribe: (a) A tribe of artists with wild hair and casual manners. (b) The wedding joined the two tribes together.*

The *Merriam-Webster Dictionary* gives the origin of the word “tribe” as Middle English from 1150 to 1470), from Latin *tribus*, a division of the Roman people, whose first known use was in the 13th century.

My use of the word “tribe” is therefore deliberate: it is an attempt not to distort the meaning of what the user means to say, and to use it in the way users intend it. The discussion below, points to some of the dilemmas in the use of the word “tribe”.

“*Africa Focus*” narrates that in his 31st December, *New York Times* dispatch from Nairobi, Jeffrey Gettleman argues that the Kenyan electoral crisis ‘seems to have tapped into an atavistic vein of tribal tension that always lay beneath the surface in Kenya but until now had not provoked widespread mayhem.’ There were complaints that although Gettleman was not exceptional among those covering the post-election violence in his stress on ‘tribe’, his terminology was unusually explicit in revealing the assumption that such divisions are rooted in unchanging and presumably primitive identities.

However, *Africa Focus* gives an update indicating that since that particular bulletin on Gettleman’s use of language, ‘Gettleman’s coverage of Kenya in the *New York Times* has avoided the indiscriminate use of the word ‘tribe’ in favour of ‘ethnic group’, and has noted the historical origins and political character of the continued violence in the country, as well as its links to ethnic divisions’. But Peter Alegi from Michigan State University in an H-Net Africa posting complicates the matter: ‘While Gettleman (*New York Times*’ East Africa bureau chief) seems to have toned down his use of ‘tribe’, thanks to our protests, but isn’t substituting ‘ethnic group’ for it a minor victory?’....

Africa Focus continues the conversation with the following information:

“Carol Sicherman, a Prof Emerita at Lehman College, underlines Alegi’s point with the following post to H-Net Africa. She states: “On 12th January, I wrote to the Public Editor of the *New York Times* as follows (I did not get an answer): Reading recent dispatches from Kenya, I was pleased to notice that the *Times* has responded to years of complaints about the biased terms “tribe” and “tribal”, replacing them with “ethnic group” and “ethnic”. This editorial policy, however, seems to be confined to the news. Roberta Smith’s article “*Face Time: Masks, Animal to Video*” in the Arts Section on 11th January uses the egregiously offensive phrase “a tribal, almost animalistic ritual”. It is exactly that equation that makes it necessary to remove “tribe” and its related words. In the case in question, removing “tribal” would have put the focus on “animalistic” without designating Africans as inherently animalistic. It is particularly odd to find such a cliché in a discussion of the work of Yinka Shonibare, a highly sophisticated, learned and ironic artist (...).⁵

Anengifeya Alagoa adds on to the debate on tribe by pointing out that:

“I totally agree that the use of the word ‘tribe’ has a definite connotation of primitive savagery, and I have for a long time refused to use it. The Basques and the Catalans are minority ethnic groups in Spain, but they are never referred to as tribes. Neither are the Bretons of France or the Welsh of Great Britain. Tribes seem to exist only in Africa, in the Amazon jungle, or in Papua New Guinea. Native Americans and aboriginal Australians were also referred to as tribal people because they were perceived by the white settlers to be savage and primitive. It is sad to read in the African press references to our various ethnic groups as tribes. I am frequently asked the question, “What tribe do you belong to?” I find this very offensive, and it often sets me off on a lengthy diatribe on the reasons we Africans should never refer to our indigenous nations and ethnic groups as tribes.”

I am not the only one who has struggled with the term. Atsango Chesoni writes that she “considers the words “tribe” and “tribalism” to be pejorative and used them only in quotations”. She quotes the *Concise Oxford Dictionary of Current English* (Oxford: Clarendon Press, 1990) at page 1303: Tribe...1. a group of (esp. primitive) families or communities, linked by social, economic, religious, or blood ties and *usu*, having a common culture and dialect, and a recognised leader; 2.

any similar natural or political division...⁵ *usu.derog.* a set or number of persons, *esp.* of one profession, etc. or family. The *Concise Oxford Dictionary* defines ethnic as: 1a (of a social group) having a common national or cultural tradition; 1b) of clothes, etc.) Resembling those of a non-European exotic people.⁶

In this book, I use ethnic community or ethnic group to mean “tribe” based on Phillip Q. Yang’s definition that “ethnic group is a social group based on ancestry, culture or national origin” and that “ethnicity refers to affiliation or identification with an ethnic group.”

In concluding the discussion on this matter of “tribe”, I have this to say. The word “tribe” has its own negative connotations that I do not subscribe to, but it is still widely used among Kenyans. Ethnic community suggests something nice, communal and useful. But “tribe”, in the way Kenyans use it, evokes in one stroke, beauty and ugliness as well as inclusion and exclusion.

* * *

This book is about my experiences as NCIC Commissioner. It seeks to answer questions frequently asked of Kenyans: *Why is an ethnic group the key defining factor in Kenyan politics? Why is Kenya so ethnically polarised? What hope is there for an inclusive Kenya?*

Much of the writing on Kenyan ethnic and racial communities is occupied with addressing cultural attributes. This includes school textbooks, which fail to address the power of the ethnic nations over the Kenyan state. This book generates a new argument, based on the study of the Kenyan cultural heritage of all the ethnicities, minorities and majorities existing as a “Kenyan nation”. This argument is that a country called Kenya has existed for quite some time, but the ethnic nations in it have ensured that the country called Kenya has very few or is devoid of Kenyans who value the country before the ethnic community. The creation of NCIC that I worked in was in itself recognition of the failure of Kenyans to live as Kenyans.

Ethnic studies in Kenya have, by glossing over an understanding of ethnic differences and what can be done to resolve them, contributed to an enhanced ethnic and cultural gap, and in so doing kept past conflicts alive. This has contributed to keeping ordinary Kenyans as

pawns in ethnic political games, and it has created space for future social unrest and conflicts. Kenyans who refuse to stand with their ethnic community, refuse to be beholden to “their own” are ostracised and branded as traitors, by their own. Standing against the ethnic community is a very lonely place to be in Kenya.

* * *

In 2009, when I began working at NCIC, Kenya was teetering between holding on to stability and falling back into violence. Perpetrators of the violence had not been brought to book; corruption continued with impunity; land reform was non-existent; and the constitution was still an unresolved agenda item. The Kofi Annan, Graca Machel and Benjamin Mkapa-led Accord appeared to be a mere ceasefire. Kenya’s window of opportunity was open to address ethnic differences, but it needed sustained attention and courage to clean the wound that was ethnicism. In the four years I worked for NCIC, I sought answers to this seemingly intractable problem of managing the negative consequence of ethnic differences. This problem had seen the creation of wide gaps in terms of access to state resources for ethnic groups who held to a different political leaning than that of those in power.

Despite all the negativity associated with the ethnic differences that have defined the Kenyan state, this book also views the ethnic community as a positive space in which education and community interaction can support inter-cultural and inter-ethnic dialogue processes at both local and national levels. The book helps understand how a women’s group, an agricultural or livestock meeting, parents’ and teachers’ associations and professional associations can contribute to preventing ethnically related conflicts and indeed transform their societies for the better.

* * *

Experiences among Kenyans have so far shown that inter-ethnic communication is generally undermined by the country’s social and cultural systems. Frequently, Kenyans turn to their ethnic groups as space to express ethnic nationalism, a place to belong. Throughout the world, it has been demonstrated that when there is dialogue on understanding differences, it leads to improved communication and

understanding between ethnic groups. The work and the achievements of NCIC have proved this thesis to be true. And this book tells the story of how some of it happened.

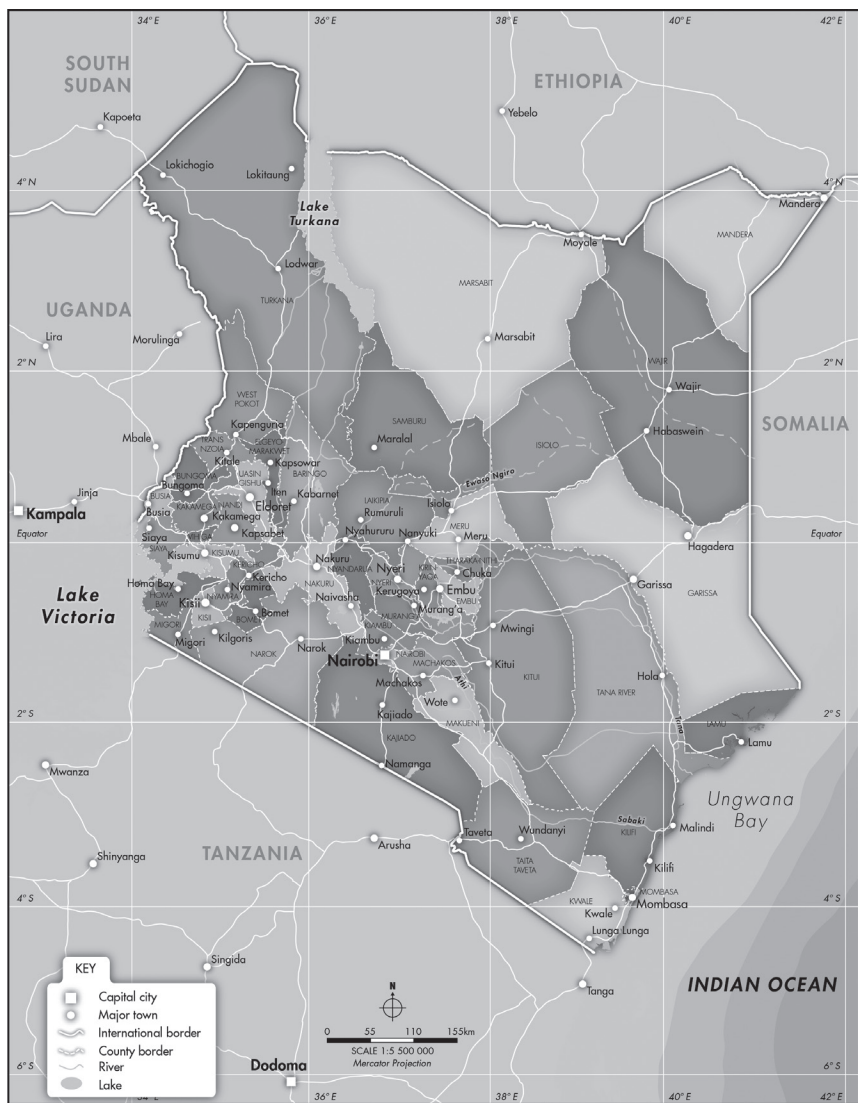
The manifestation of intolerance of ethnic communities includes injustice, violence, discrimination and intolerance. The book shows that positive policies, intra- and inter-ethnic spaces can be used to counter negative influences that lead to fear and exclusion. Its organising principle is that the diversity of the country's ethnicities need not be a pretext for conflict, but it can be a source of truly national identity.

In Kenya's multi-ethnic, multi-cultural society, this book challenges Kenyans to promote racial and ethnic diversity by: understanding the political manipulation of ethnic voting blocs, improving inter-ethnic and multi-cultural dialogue, supporting efforts to enhance diversity as an asset and transforming and preventing conflicts.

Most importantly for the future of Kenya, this book contains material framed in the form of *practical examples*, which can play several roles, not least in countries struggling with identity conflicts. The examples can also inform school curricula, infusing salient points into the whole teaching approach and across all subjects. The logic behind this method of influencing school curricula is to encourage the promotion of diversity in adulthood in spheres outside schools.

A final word: this book is not a public relations exercise. Writing it was difficult: there was so much I wished to put in that I could not, and equally much that I wished not to include. It is said that you learn more from failure than from success. Kenya no longer belongs to my generation; we are only privileged to nurture and hold it in brief for future generations. My son Mark Nderitũ and his generation deserve to know what we did right or wrong so that they work to make things right before they hand over to the generation after them.

Map of Kenya



PART I:
NCIC, KENYA'S "ETHNIC NATIONS"
& ROOTS OF HATE



Chapter 1

Conception of NCIC: A Panacea for ethnic and race divisions?

Domination by a small tribe is as dangerous as domination by a big tribe. This is the message we want to send as Parliament on this National Cohesion and Integration Commission. We want them to start the actual work and Parliament will support them.

**– Danson Mungatana, MP, debating in Parliament
on the formation of the NCIC, Kenya Hansard, 12th May 2009**

I saw the advertisement for the post of Commissioner of the National Cohesion and Integration Commission (NCIC) on 2nd April 2009 while I was working for Fahamu – Networks for Social Justice – as Director of Education for Social Justice. I had joined Fahamu from the Kenya National Commission on Human Rights (KNCHR) where I had headed the human rights education department.

The National Cohesion and Integration Act No. 12 of 2008 put forward the requirements for Commissioner in the advertisement.

18. (1) A person shall be qualified for appointment as a commissioner if such person – (a) is a citizen of Kenya; (b) is a person of high moral character and proven integrity; and (c) has knowledge and experience in matters relating to race, ethnic and human relations, public affairs, and human rights.

(2) No person shall be qualified for appointment as a commissioner if such person – (a) is a member of the National Assembly;

(b) is a member of a local authority; (c) is a member of the executive body of, or is actively involved in the affairs of, a political party; (c) has promoted sectoral, ethnic, racial or religious animosity or openly advocated for partisan ethnic positions or interests.

I applied for the position of commissioner at NCIC for three reasons: I was interested in, first, furthering ideas on ethnic and racial

inclusion through education, for instance, in the infusion of teaching of pluralism, that all ethnic communities mattered, in all subjects; second, brokering inter- and intra-ethnic social contracts to prevent conflict and third, preventing electoral violence which seemed to be our bane as a nation.

A few weeks after applying for the position, I was moderating a community dialogue on reconciliation for women in Kibera, an informal settlement in Nairobi. Jane Anyango who had formed the Kibera Women for Peace and Fairness group during the 2007-2008 post-election violence had invited me to help the women in Kibera reignite their previous relationships before the violence. The women's group drew members from all ethnic communities. Jane had brought them together and led them to resolve to take action when they realised that women were also being killed. The death of a 15-year-old girl, famously photographed by a young journalist, Boniface Mwangi, had particularly touched the women.

The women had worked on a simple message – to interrupt the violence. Each woman identified a man in the conflict that she could influence – a son, brother, cousin, nephew, father, husband, boyfriend or uncle. They all talked to the men. When there were violent street demonstrations, Jane and the other women would walk up to the men and each would get hold of the one she could influence and ask him to come back home. This strategy worked so well that the women later decided to send a message to the wives of both President Kibaki and Mr Odinga, asking them to talk to their husbands to end the conflict. After the violence, the women from all ethnic communities began to meet regularly. It was during one of those sessions that I was invited to make a presentation.

I was accompanied by my colleague in Fahamu, Yves Niyiragira, a Hutu from Burundi and my friend Leonie Abela, a Tutsi from the DRC, then working for Agency for Cooperation and Research in Development (ACORD), an NGO. My idea was to have Yves and Leonie share their experiences of ethnic profiling so that the women in Kibera could draw parallels with their experiences. The women could then map out a way towards a pluralistic peaceful coexistence on the joint understanding that whichever way the politics flowed, when there

was violence, the people on the ground would suffer most, regardless of ethnicity, or country.

This particular meeting was focused on discussions with mothers, drawn from all the ethnic communities, of the young men who had been shown on TV destroying the railway tracks and others who had been attacking people on the streets. Their mothers said they needed help to cope with the hatred directed at them by members of the communities their children had attacked. It helped that Yves, a Hutu, looked like the typical stereotype of Tutsi, tall and sharp-nosed and that Leonie, a Tutsi was short like a typical stereotype of a Hutu. We would let the women assume their identities and reveal them only when the workshop was ending. This served as a perfect way to end the workshop, and the women would go home questioning stereotypes that they had of other Kenyan ethnic communities.

In addition to the presentations by Yves and Leonie, I had a few video documentaries from South Africa and Rwanda on reconciliation to show the women. The documentaries were important to show examples of day-to-day peaceful coexistence as Kenyans waited for formal justice and reconciliation processes. Some of the women would later become part of a documentary that we produced at Fahamu, recording Kenyan women's voices on the PEV.

In the course of the workshop, I got a call inviting me to Parliament for an interview the following day. They had sent a letter through my post office address, apparently. Not email, although I had provided it. If I had missed that phone call, most probably, I would have missed the interview.

I prepared for the interview overnight, carefully reviewing both the Parliamentary Bill and Act that set up what was then named the Ethnic and Race Relations Commission, revised later to the National Cohesion and Integration Commission. One of the statements that inspired me from the Act was; "Kenya has realised that equal access to various opportunities without ethnic discrimination was a prerequisite for cultivating goodwill, lasting peace and coexistence among its various communities." Knowing Kenya's history of not discussing ethnic and racial differences "Kenya has realised" was a very powerful statement for me. The Bill already had a brief history. Members of

the Parliamentary Committee on Administration of Justice and Legal Affairs had scrutinised the National Ethnic and Race Relations Commission Bill and found it wanting. While some MPs had welcomed the law, saying that it was long overdue for the country to have a law on ethnic and racial discrimination, others dismissed the Bill.

Those who opposed the Bill argued that the Government could misuse the proposed commission to witch hunt its ‘enemies’ and further, they said, the Kofi Annan led Serena team of negotiators who had spearheaded the thinking on the need for such a Bill, were influenced by the violence around them to draft a draconian Bill. Their arguments were in keeping with a history of sweeping discussions on, especially, ethnic relations under the carpet. If enacted, the commission was to have 12 members, comprising a chairperson appointed by the President from among 15 nominees cleared by the relevant committee of Parliament. Of these, eight were to be commissioners, while three were to be ex-officio members – the chairpersons of KNCHR, the National Commission on Gender and Development (NCGD) and the Public Complaints Standing Committee (Ombudsman).

The Parliamentary committee on Administration of Justice and Legal Affairs finally settled on a National Cohesion and Integration Commission (NCIC) for the name. They agreed that the Bill should be returned to its originator, the Minister for Justice, National Cohesion and Constitutional Affairs (MoJNCCA) Martha Karua to make changes. However, Parliament did not change the contents of the Act. In effect, this meant that the Bill previously known as the Ethnic and Race Relations Bill became the National Cohesion and Integration Bill.

There were four people shortlisted from each of Kenya’s eight provinces, except Nairobi, that had only two. I was interviewed by the Parliamentary Committee on Administration of Justice and Legal Affairs, chaired by Abdikadir Mohammed, MP for Mandera Central. At the interview, I promised that I would put to good use my experience to ensure a national conversation on ethnic and race relations and also engage stakeholders on reviewing the education curriculum to include issues on ethnic and racial inclusion. I had been impressed by a human rights workshop I had attended the year before, in which the speaker, Chidi Odinkalu (he later became the chair of the Nigerian Human Rights

Commission) had spoken of the need to “drag a majority of Africans out of the undocumented, informal state, into the documented one.” “The undocumented people could not make any civic or economic claims on anyone,” he said.

I told the interviewing committee that this was what I hoped NCIC would achieve; make everybody matter in Kenya. There were many undocumented people who did not feel like they were part of the country because they did not see any benefit. If I disappeared today, I said, I would be found easily – by checking out when I last used my Supermarket shopping card for example, or my bank’s ATM card. “There are people who die in this country and nobody knows about it, people who are not budgeted for because they do not exist, their ethnic communities submerged into others. Because I had national registration, I could make demands upon the state, while they could not. “NCIC should therefore be judged ultimately by the extent to which it was able to bring people from a zone of status outside the state sector to a zone of citizenship within it”.

Chidi had said that “people outside the documented state system do not and cannot make demands on it. When they do so, it is through a rent inducing relation of intermediaries who prey on them, and contribute even further to their impoverishment”. Success in bringing the undocumented Kenyans within the fold would mean that NCIC would work with them to ensure equitable distribution of resources; they would then believe that it was worth it to be Kenyan.

On 30th April 2009, Mr Mohammed tabled a motion in Parliament seeking adoption of the nominees for the positions of commissioners at NCIC. Fifteen nominees were picked from an initial list of 109 applicants.⁸ I made it to the final shortlist that was tabled in Parliament. The issues that the MPs raised in this rare and frank discussion on *ethnic and race relations* in Kenya formed the bedrock of our work. Mr Mohammed moved the House with a description of the state of affairs in the country, showing how animosity among ethnic communities was tearing the nation apart. He said that the problem of ethnic differences should have been addressed at independence. Almost every MP who spoke, from both PNU and ODM, supported the fact that the list had more women than men.

Nominated MP Millie Odhiambo (ODM) seconded the motion. Mr Eugene Wamalwa (Ford-Kenya) walked the house through a history of electoral related ethnic clashes that had bedevilled the country and talked about achieving what Mwalimu Julius Nyerere had done in Tanzania by unifying the nation; work he hoped the new commission would spearhead. Mr Omingo Magara (ODM) and Assistant Minister for Trade urged Parliament and the country to support the commission.

Prof Margaret Kamar said she hoped that Parliament would take the commission's work seriously and support it. When she was appointed the Minister for Higher Education, Science and Technology in 2011, she lived true to her words, supporting our work greatly. Speaking in Kiswahili, ODM-Kenya MP Johnstone Muthama cautioned against vilifying the commission when it reined in hate mongers.

Mr Danston Mungatana (PNU) made a powerful statement that later inspired NCIC to conduct the first *ethnic audit* of the public service. The MP for Ganze Francis Baya (KADU-Asili), a member and later chair of the Parliamentary Committee on Administration of Justice and Legal Affairs, underlined the competencies of the team that had made it to the short list. Nominated MP Rachel Shebesh (ODM) asked that the mover of the motion reply because there was consensus around it, but Mukurweini MP Kabando wa Kabando (Safina) pleaded for more time to deliberate on it. The temporary Deputy Speaker Prof Philip Kaloki agreed and the discussion continued. Mr Francis Baya asked the commission to come up with clear policies that would help Parliament enact proper laws to manage the country's ethnic problems.

"We are looking forward to a Commission that will independently and outside the political timing, help develop policies that will ensure that we come up with clear legislation to manage our ethnic relations," he said. This statement by Mr Baya would form the basis of work that I would spearhead countrywide, working on an ethnic and race relations' framework.

The MP for Isiolo South Abdul Ali Bahari (KANU) pointed out that it was not possible to legislate national cohesion, because, a nation cannot be created by a law; but is created by the sense of justice, equity, non-discrimination and access to resources assured to citizens

nationwide. Laws can only act as deterrents, but not a panacea. Gem MP and ODM Chief Whip Jakoyo Midiwo then asked that the mover be called to reply and the temporary Deputy Speaker Prof Philip Kaloki accepted. Mr Abdikadir thanked the members. The house had stood together and the 15 names were passed to the President and Prime Minister.

From the fifteen names, eight commissioners and a chairperson were named to head NCIC. We had undergone a very intensive selection process, from the initial application, short listing, interview by the Parliamentary Committee on Administration of Justice and Legal Affairs, vetting by various bodies such as the National Security Intelligence Service (NSIS), the Kenya Anti-Corruption Commission (KACC) and finally approval by President Mwai Kibaki and Prime Minister Raila Odinga.

Chapter 2

Kenya Bleeds: 2007-2008 Crisis

Pity the nation divided into fragments, each fragment deeming itself a nation.

– **Khalil Gibran,**

The Garden of the Prophet

The violent conflict of 2007-2008 was different from previous electoral violence that had happened in 1992 and 1997 because it followed a fairly peaceful election. The violence that swiftly engulfed the country claimed more than 1,300 lives and displaced more than 600,000 people in a matter of weeks, and property of incalculable value was destroyed. The killings turned out to be ethnic cleansing in a number of places, particularly in the then Rift Valley, Nyanza, Western and Central provinces, as ethnic communities turned against each other and security agencies were unable or unwilling to stop the violence. Motor and rail transport were disrupted which in turn rendered vital economic links inside Kenya and connecting to the neighbouring countries, especially Uganda, Rwanda, Burundi and the DRC, inoperable.

Kenya was fast sliding into a failed state with all the characteristics of total governmental collapse evident. Internationally aided mediation became the only option, and Kofi Annan was mandated by the African Union to lead the Kenya National Dialogue and Reconciliation (KNDR) process. It took the KNDR for the world to realise that Kenya's crisis was deeper than the result of electoral malpractices, and that it was more about certain fundamental issues, which underlie the very existence of communities that make up Kenya as a nation. The KNDR made it evident that deep-seated resentments over unresolved historical issues and ethnic/cultural differences existed among Kenyans. These issues had found expression following the disputed presidential election results, and the consequence was the Post-Election Violence (PEV).



Cartoon showing the leading contenders in the 2007 elections Kalonzo Musyoka on the right, Mwai Kibaki in the centre and Raila Odinga on the left playing cards and hiding the “tribal card” under the table.

Longest months in post-independent Kenya

On 27th December 2007, I woke up early to vote and carry out my duties as an observer of the elections assigned by KNCHR. The voting was uneventful. I voted at Shimo La Tewa Primary School in Kisauni Constituency, Mombasa. The queuing and voting was characterised by camaraderie and lack of tension.

The leading contending parties were Party of National Unity (PNU), Orange Democratic Movement (ODM) and ODM-Kenya. PNU had been formed in September of 2007 largely as a vehicle for President Kibaki’s re-election bid. It was a coalition of many parties including Kenya’s oldest party, Kenya African National Union (KANU) that had been launched in 1960 and led the country to independence under Mzee Jomo Kenyatta and Jaramogi Oginga Odinga in 1963. Others were Narc-Kenya, Ford-Kenya, Democratic Party (DP) and Shirikisho Party of Kenya (SPK). The ODM was a product of the 2005 constitutional referendum. The name orange originated from the ballot cards in the referendum in which a “YES” vote was represented by a banana and a no vote by an orange. The oranges won.

The original members of ODM were Uhuru Kenyatta's KANU party and Raila Odinga's Liberal Democratic Party (LDP). KANU pulled out after the referendum. Kalonzo Musyoka as party leader headed ODM-Kenya. ODM-Kenya was created out of a split between Mr Kalonzo Musyoka and Mr Raila Odinga.

Early results on 28th December 2007 indicated Raila Odinga of ODM was in the lead. On 29th December, ODM supporters were already celebrating a Raila win. However, the gap between Kibaki of PNU and Raila of ODM was later reported to be narrowing until Kibaki took the lead. On 30th December, Raila called a press conference in which he accused the government of fraud, asking for a recount. He also demanded that Kibaki concede defeat. Martha Karua, speaking for the Kibaki side told him to take the matter to court. Raila said he would not take the matter to court as he assumed Kibaki controlled the Judiciary.

On 30th December, the Electoral Commission of Kenya (ECK) Chairman Samuel Kivuitu announced the election results, declaring Mwai Kibaki of PNU as the winner. The difference in votes between them was 232,000. Raila Odinga's ODM immediately alleged electoral manipulation. International observers reported manipulation and Mr Kivuitu said as much, reckoning that that his staff were providing him with 'cooked' figures. This statement was played over and over again on electronic media.

Mr Kivuitu further admitted that there were irregularities and asked those aggrieved to go to court as the electoral commission could not deal with the matter. Kibaki was then sworn in as President, late in the evening of the same day, with a few people in attendance. The late night swearing-in, broadcast live, was a huge contrast to President Kibaki's first swearing-in at Uhuru Park in 2002, where enthusiastic crowds drawn from all Kenya's ethnic communities in their thousands had said goodbye to the old order symbolised by President Moi. After the late evening swearing-in, Kibaki called for "healing and reconciliation" to begin.

But the country exploded!

ODM supporters began a violent rampage in the Kenyan towns of Mombasa, Nakuru, Naivasha, Eldoret, Kisumu and Kakamega. This increasingly turned out to be targeted ethnic violence mainly against the Kikuyu, President Kibaki's community and PNU supporters. The

violence, though spontaneous in some areas, was clearly organised and methodical in others. In the Rift Valley, the Kisii community was targeted alongside the Kikuyu. The police began shooting dead a number of people, many of them suspected to be anti-PNU. There was total mayhem.



Kenya is bigger than all tribes

On 31st December 2007, UN Secretary General Ban Ki-Moon issued a statement calling upon Kenyans to remain calm even as he expressed concern over the on-going violence. He also urged the Kenyan security forces to show restraint. On the same day, the UN High Commissioner for Human Rights, Louise Arbor, called on the Kenyan Government to abide by its international human rights obligations.

Both calls were ignored and as if on cue, the next day, New Year's Day 2008, 30 Kikuyu, people among them children and a disabled woman, were burnt to death at the Kenya Assemblies of God church in Eldoret church, Rift Valley, where they had hidden from the attackers. They were part of the immigrant Kikuyu and had named the church and area Kĩambaa after the village they came from in Kĩambu, Central Province.

The colonialists had displaced the Kikuyu from the land they occupied and taken many of them to work as farmhands in the Rift

Valley. The original Rift Valley communities were the Maasai and Kalenjin, mainly pastoralists. After independence, the land in Central Province either remained in the hands of the former colonialists or was taken over by the new African elite, many of whom were previously loyalists, who served or were in league with the colonial government. The displaced Kikuyu, therefore, remained in the Rift Valley. Others who bought land in the Rift Valley after independence joined them. These were the people burnt to death.

On New Year's Day, Kibaki called for peace and said that lawbreakers would be arrested. The message was ignored and the violence across the country continued.

Shortly after, the Kikuyu began to retaliate against the Luo, Raila's community and the Kalenjin, William Ruto's community, notably in Nakuru and Naivasha. The violence spread to the informal settlements in Nairobi. The Rift Valley became a no-go zone. The landlocked countries of Uganda, Rwanda and Burundi were caught in crisis, as the passage of goods including foodstuff from Mombasa port in Kenya, were blocked by marauding gangs.

The violence easily took ethnic fault lines. The other communities, particularly the Luo who had voted for Kibaki to a person in 2002, mainly, due to Raila's mobilisation expected the Kikuyu to return the favour in 2007 and vote for Raila. Kibaki was only expected to serve for one term according to a private arrangement between them. Jomo Kenyatta, Kenya's first President was Kikuyu. Moi was Kalenjin. Kibaki was Kikuyu. Contemplating another five-year era of Kibaki leadership with real or perceived benefits to the Kikuyu and the exclusion of other ethnic communities was too much for those communities to bear. ODM's 41-against-1 strategy, which referred to Kenya's 42 ethnic communities – 41 ethnic communities against one, the Kikuyu, therefore fell on very fertile ground.

* * *

ODM announced that Raila would be declared the People's President on 31st December at Uhuru Park. The police issued a statement that he would be arrested if he did so.

On 2nd January, as violence-engulfed Kenya, the ECK Chair, Samuel Kivuitu continued to make appearances on national television and also

gave interviews to the print media. Kivuitu dropped a bombshell by casually saying to a journalist after he had already announced Kibaki as the winner, that actually, he did not know who had won the election.⁹ By this time, it was clear that Kenya was headed to the dogs. South Africa's Archbishop Desmond Tutu arrived on the same day, but he was unable to get the two sides to agree.

The violence now seemed unstoppable, like a wildfire, it had taken a life of its own. The government suspended local live television coverage on the violence. However, TV stations such as Al Jazeera were beaming the news into Kenyan sitting rooms. The country was on fire. On 3rd January, Raila called on Kenyans to show up at Uhuru Park in a "one-million-man march". The police showed up at the park and tear-gassed Raila's supporters who had showed up. Meanwhile, Kibaki extended an olive branch to Raila. He said he was willing to engage in dialogue with him on condition that Raila called off his supporters from demonstrating. Raila rejected the offer and asked Kibaki to resign first as he did not recognise him as President.

The then Attorney General (AG), Amos Wako offered a recount, investigation into the election anomalies and the formation of a Government of national unity. Raila stuck to his guns, saying that Kibaki should resign first. Uhuru Kenyatta, who had been previously Leader of the Official Opposition, responded to Raila, saying that the position that Kibaki should resign first was not up for discussion. Meanwhile, Prof Peter Anyang' Nyong'o ODM's Secretary-General called for a new presidential election to be held, without involving the ECK.

On 5th January, US Assistant Secretary of State for African Affairs Jendayi Frazer came to the country and began to negotiate a settlement with the two protagonists. Kibaki accepted to form a government of national unity. Raila stuck to his guns, with the position that, he was not willing to discuss anything with Kibaki unless he resigned as President. Jendayi left but said that Raila had agreed to stop demanding Kibaki's resignation, if Kibaki accepted an international mediator.

Call for international mediation

On 6th January, Raila resumed his calls for rallies to be held on 8th January. Kibaki's government promptly issued a statement that the

rallies would be illegal. Meanwhile, Ghanaian President and the then African Union (AU) Chairman John Kufuor arrived in the country. Raila said that ODM had ruled out a government of national unity, but it was open to a coalition government, with genuine power sharing or the establishment of an interim government to hold a new election.

In a show of goodwill, Raila cancelled the rallies planned for 8th January. Raila said he wanted direct talks with Kibaki and President Kufuor's participation.

The then government spokesman, Dr Alfred Mutua however, poured cold water on President Kufuor's efforts, when he said that Kufuor had only come to 'take tea not to negotiate'. The PNU side of government went into overdrive to downplay President Kufuor's presence and the severity of the post-election crisis, calling it a local problem, and urging displaced people to return home, even as the violence raged. Raila insisted on President Kufuor's presence. Meanwhile, Jendayi Frazer said that from her investigations, there had been rigging in the election, complicated by what she said was rigging from both sides (PNU and ODM).

On 8th January, Kibaki appointed 17 Ministers as part of a new Cabinet. The Cabinet included Kalonzo Musyoka from ODM-Kenya party, named Vice President and Minister for Home Affairs. Two members of Kalonzo's party, Mutula Kilonzo and Samuel Poghiso were also appointed to the Cabinet. Uhuru Kenyatta of the KANU party was appointed Minister for Local Government. Prof. Anyang' Nyong'o, speaking for ODM, said that the Cabinet was illegitimate as in ODM's opinion; Kibaki had not won the election. The announcement of the new Cabinet was accompanied by new bouts of violence from ODM youth, particularly against Kalonzo's Kamba community in Mombasa and Nairobi. Since Kibaki had only appointed half the Cabinet, the PNU side said that the remaining slots would be filled by ODM after the negotiations.

On the same day, former African Presidents Benjamin Mkapa (Tanzania), Joaquim Chissano (Mozambique), Ketumile Masire (Botswana) and Kenneth Kaunda (Zambia) arrived in Kenya. Despite all attempts to mediate, they were unable to broker peace.

Musalia Mudavadi, Raila's running mate said that the key ministries had now been filled, and that, Kibaki was trying to sabotage mediation with President Kufuor. The country was on the edge, tired of the back and forth and it was with a sense of relief when on 9th January, President Kufuor finally met, though separately, with Kibaki and Raila. After the meeting, Kibaki issued a statement that there was not going to be any vote recounting and that all parties should take their grievances to court. Prof Nyong'o of ODM, in turn, issued a statement in which he said that Kibaki had refused to sign an agreement that ODM had signed and which was presented to both by President Kufuor. He said both sides had agreed to an immediate cessation of violence. The part that Kibaki refused to sign provided for an interim coalition government and an inquiry into what had gone wrong with the electoral commission, ECK.

The PNU side promptly responded by blaming Raila for the failure of the President Kufuor led talks saying that Kibaki was ready for dialogue. On 10th January, Kufuor left Kenya with a message of hope that Kibaki and Raila had both agreed that they would take part in talks led by former United Nations Secretary-General, Kofi Annan, with his AU Panel of Eminent African personalities. A statement from Annan said that he could not come immediately; he needed five days to recover from an illness. Kenyans received the news with disappointment. Five days, it seemed, was too long to wait. On the same day that President Kufuor left, President Kibaki swore in the new Cabinet ministers.

ODM's Prof. Nyong'o began to call for mass action to be held in 30 various places across Kenya in the following week. But the police announced promptly that the mass rallies had been banned and would be dispersed. The European Union (EU) added its voice to the stalemate, saying, it would henceforth be 'business unusual' adding that they could no longer continue with business as usual with Kenya unless there were solutions to the dispute. America's Assistant Secretary for State, Ms Jendayi Frazer, joined the fray, added her voice to the 'business unusual' voices and insisted that Kibaki and Raila should meet on their own volition and acknowledge serious irregularities in the vote tallying on both sides, which made it impossible, to determine with certainty, the final result. She also asked the government to lift the ban on live television coverage.

Meanwhile, PNU dug in for a fight. On 14th January, the Minister for Transport and Communication, John Michuki, said the government had not invited Annan, because, there was no need as Kibaki had won the election. Parliament reopened on 15th January, the day when Annan was expected to arrive in Kenya. The first agenda was election of the Speaker, and ODM members insisted on election by an open ballot instead of a secret ballot.

Although there was tension and violence across the country, it was not lost on ordinary Kenyans, watching the live coverage on national television that the MPs from the PNU and ODM side were hugging boisterously. It was a painful lesson for their followers, who were attacking each other on the ground. However, the camaraderie did not mask the tension, as the house voted for a speaker. There were two candidates; PNU had Francis Ole Kaparo, the immediate former National Assembly Speaker, and ODM had lawyer Kenneth Marende. The country was glued to television screens and radios as MPs harangued in voting that went on late into the night. Marende was finally elected in the third round with 105 votes against 101 for Kaparo.

Annan was still sick. Buoyed by the wins in Parliament, and the absence of Annan, ODM began the planned mass action on 16th January 2008. The police repulsed the demonstrators with force. The aim of the police was to prevent the demonstrators from going to Uhuru Park, where, they alleged that Raila was to be sworn in as the “People’s President”. The protests were replicated in Kisumu, Eldoret and Mombasa. In Kisumu, a policeman was caught on camera shooting a protestor to death.

Martha Karua, the Minister for Justice, National Cohesion and Constitutional Affairs accused ODM of ethnic cleansing. Raila responded by saying that the violence perpetrated by his supporters was a reaction to the actions of the police. The violence continued from 17th to 19th January. Driving to work from my home in Woodley Estate, which was next to Kibera where there was a lot of violence, I would see a dead body, literally every day, lying on the streets. I was disturbed by my numbness towards the dead. Death had become normal. When driving with my ten-year-old son Mark, I would advise him not to look out any time I saw a dead body. I also discouraged him from watching

the violence scenes on TV. But I watched, unable to pull myself from the unfolding scenario as my country inched closer to the precipice.

There was collective exasperation when ODM announced on 19th January that the protests would continue till 24th January. People had begun to feel the pinch of war. Severe food shortage and cell phone airtime hit the country. ODM began a campaign to economically boycott big businesses owned by PNU bigwigs, specifically from the Kikuyu community.

The UK High Commissioner Adam Wood weighed in and criticised the rigidity by the PNU side. This prompted Foreign Affairs Minister Moses Wetangula (PNU) to summon and give a tongue lashing to the UK High Commissioner, telling him “Kenyan elections did not need a stamp of confirmation from its colonial masters.”¹⁰

These were the events that led to the establishment of NCIC, a commission that I began working in as a Commissioner.

Chapter 3

Sowing seeds of ethnic hatred: Colonial State in Perspective

Based on the decision that banned national political parties, communities had no choice but to come together and set up ethnic-based parties. The foundation of ethnic political parties that would haunt the country that would be called Kenya decades later was born.

– Wairimũ Nderitũ

Most of the current ethnic divisions in Kenya can be explained by history. The history of race and ethnic relations in the country is not pretty. But it is only in stating it that Kenya can find her national soul and become what it should have been at independence from Britain in 1963: a nation.

African states came into being through influences from outside that partly explain the continuous intra- and inter-state conflicts on the continent. Western states formed over time, as a result of violent conflict and competition that saw the rise of absolutist authoritarian rulers, prompting a new order, grounded in a notion of non-interference in each other's affairs. The 1648 Peace of Westphalia solidified the concept of sovereignty among European nations, and marked the inception of the modern state system that was "attended by remarkable violence, as most of the history of state formation in Europe is a history of coercion and cruelty."¹¹ This long and non-interfered with evolution allowed kingdoms to take shape into the established states that we see in much of Europe.

In 1455, Pope Nicholas V issued an edict to spread Christianity: "Invade, search out, capture, vanquish and subdue all Saracens and pagans whatsoever, and other enemies of Christ wheresoever placed (...) reduce their persons to perpetual slavery, and to apply and

appropriate to himself and his successors the kingdoms, dukedoms, counties, principalities...”¹²

School history books tell of the arrival, on the evening of 7th April 1498, a Sunday, of Vasco da Gama, a Portuguese explorer, in the Kenyan coastal town of Mombasa. The Mombasa people welcomed him warmly, giving him and his tired crew food, water and gifts, which he received. On 13th April 1498, the Vasco da Gama ships bombarded Mombasa and left it in ruins.

From 1884-85, the European powers met in Berlin in a conference that partitioned, apportioned and drew the physical borders within Africa. Among them, was the entity that was to become Kenya, apportioned to Britain.¹³ The creation of these states would create an abrupt change for the people who dwelt within their new borders and result in ethnic schisms.

The defining factor for drawing up the boundaries was not the people but physical and geographical features such as mountains or rivers. Interactions between the communities, with their social and cultural fabrics, were not a factor that was considered. Oral testimonies handed down from generation to generation, names, interlinked cultural traits, are all proof that communities had interacted, inter-married and traded with each other.

The Africans resisted all over Kenya. To name just a few, in the coastal region the British were met by fierce resistance by indigenous forces led by Mbaruk Rashid, Simba Ahmed Fumoluti, Fumo Bakari, and Fumo Omari. In Taita, military forces led by Commander Mwangeka resisted. The Giriama rose against the British, led by a woman, Mekatilili wa Menza and Wanje wa Mwadorikola. In Ukambani, the resistance to colonialism was led by Mwana wa Muka, Commander Ndua and a woman, Syonguu. In Kikuyuland, Chief Waiyaki wa Hinga, in Nandi, Koitalel arap Samoei, Parserion arap Samoei, arap Chermon of Marakwet, in Turkana, Ebei and Lowalel. Fierce battles also took place in the Kipsigis, Elgeyo, Pokot, Tugen and Marakwet regions as well as Nandi. Mbatian provided centralised leadership for the Maasai. The famous battle of Chetambe led by the Bukusu is an important battle in the annals of Kenya's anti-colonial legacy. More anti-imperialist resistances took place in Bunyala, Maragoli, Kabras, Kager, Samia,

Kakamega (Isukha and Idakho) Tiriki and Bunyore. The Abagusii fought fiercely in among many others the battle of Getembe led by a woman, Moraa wa Ngiti and warriors such as Otenyo Nyariganato. In Nyanza there were fierce battles in Sakwa, Seme, Uyoma, Ugenya, Asembo and Kanyanakago and in Kuria. The Somali were in turn led in resisting by among others, Mohammed Abdille Hassan.¹⁴

The new boundaries saw ethnic communities and even families split into two. Kenya and Uganda personify this split through the good example of the Awori family, who lived on the border of Kenya and Uganda. Two Awori brothers ended up as Members of Parliament, one in Uganda and the other in Kenya. Aggrey Awori ran for president in Uganda in 2001 coming third while his brother Moody Awori served as Kenya's Vice President from 2003 to 2007.¹⁵

This is one of the good examples. But many other border divisions had tragic and large-scale consequences. Such tragic cases include the break-up of the Somali ethnic nation that led to the "Shifita war" in Kenya. The marking of the borders prioritised international recognition over internal cohesion among the people within Kenya, thus ensuring that the states were purely juridical in character.¹⁶ Following the Berlin conference, in the period between 1884 and 1915, the Europeans made numerous incursions into Africa.¹⁷ The British in particular established their colonial rule and their settlements in Kenya under what eventually became known as the British East Africa Protectorate, and the Imperial British East Africa Company would follow in 1888. In 1890, Germany handed its coastal holdings to Britain to avert a conflict between the two European nations.

In 1896, construction of what the British named the Kenya-Uganda Railway (although it did not reach Uganda) began in Mombasa, and reached Kisumu on the shore of Lake Victoria in 1901. It was built while imposing considerable hardship on both the indigenous people and on the Indians brought in by the British to work on the project. Strong opposition to the project came from indigenous Kenyan communities especially the Nandi, a Kalenjin sub-ethnic community, led by Orkoiyot Koitalel arap Samoei. They resisted the building of the railway line for almost 10 years, until 1900 when the British created a "native reserve" and forcibly confined the community. This marked

the first time in Kenya that the British had confined a whole ethnic community to a native reserve. The British subsequently replicated the practice to other communities in Kenya. Inevitably, the much superior firepower of the Europeans resulted in the eventual conquest of the Africans. One of the strategies the colonial administration used was by demolishing Africans' governance system, where the elders and chiefs governed communities. Instead, they introduced a divide and rule strategy and appointed their own chiefs.¹⁸

This conquest laid the foundation for the colonial settlements.

When World War I began in 1914, the governors of British East Africa conscripted Africans to fight for their colonisers. And from 1915, the colonialists had enacted labour and taxation laws. This fanned resentment at colonial domination, which often simmered below the surface, with the Africans afraid of the superior firearms of the colonialists. Land leases were extended for the White settlers from 99 to 999 years. The colonial settlers, affected by a fall in world prices, enforced a one-third cut in wages of all Africans. A law for the compulsory carrying of *kipande*, *an identity card by every African* had been passed in 1915, punishable by beatings, jailing and in some cases death to those found without it. Colonial chiefs and administrators became increasingly ruthless.

The early part of the 20th century saw many British and other European farmers settled in Kenya's most fertile central highlands, becoming wealthy farmers of coffee and tea, described as the:

*... "demi-gods of Empire. Tall, rangy, athletic, they arrived on the boat from England to Mombasa filled with high ideals and utter uncertainties. Educated at Oxford, Cambridge or the Scottish Universities, they were the last generation of those who believed Cecil Rhodes' maxim that to be born an Englishman was to draw the winning ticket in the lottery of life. They came as missionaries, soldiers, farmers and administrators, conquering the Dark Continent with a Bible in one hand and a gun in the other. (...) believing in a monstrous sleight of hand, that the British, in conquering East Africa, were actually doing the indigenous tribes a favour by taking their land and exploiting their resources. What is more not seeing the slightest irony of the fact that (they) he arrived midway through the First World War, at that time the most catastrophic war in history, (they) he sincerely believed that his (their) mission was to keep the peace and civilise the 'noble savage'."*¹⁹

By the 1930s, approximately 30,000 white settlers lived in Kenya, enjoying a political voice in British affairs because of their contribution to the market economy through profits. The central highlands that the British settled in had previously been home to Kenyan communities such as the Maasai, the Kikuyu and the Kalenjin, whom they drove out. The Kikuyu in particular began moving to towns and other areas such as the Rift Valley, due to marked land pressure²⁰.

The colonial settlements marked the beginning of the complete redesigning of the ethnic social and political fabric of the entity that was to be called Kenya. Colonialism introduced the system of land title deeds that undermined ethnic communal land ownership that they had found; and to further protect their interests, they banned the growing of coffee among the indigenous Africans. They also introduced a hut tax, with the landless forced to work on the settlers' land for free. The colonialists built schools, hospitals and roads, even as they undermined the existing religions, songs, dances and way of life, which were replaced with their own. Ethnicity was emphasised as a divisive factor, with communities isolated from each other and given work depending on their perceived ethnic capabilities. This gave rise to current stereotypes peddled about these communities to the present day.

Alienation from culture and a source of independent livelihood became a major factor in the contribution to loss of communal identity. This new African identity was to change even further by forceful conscription of Africans of different ethnic backgrounds into World War I. They came back with an understanding of individualism, and of a far wider view of colonial imperialism, customs, and cultures.²¹

Importantly, they learnt the English language, a powerful tool with which to communicate across cultures, communities and ethnic divides. Many other developments that had a direct effect on the shaping of non-ethnic identities also evolved, such as the creation of a working class. Most crucial to the sowing of nationalism was the time spent together in the war trenches by Africans of different ethnic communities. This exposure enhanced their knowledge of each other and also their mutual appreciation.

After the war, building on the skills they had acquired, these Africans met in urban areas as Kenya's new working class. They were no longer

afraid of the colonialists, having seen them die beside them in war. Importantly, an ethnic background was no longer the key element that shaped their identity. Their experiences became a key foundation to setting up a non-ethnic base from which to launch a number of initiatives that were to enhance nationalism.

By 1920, some of the members of this working class were to be found in the homes of the British, providing skills they had learnt while in military service. Harry Thuku had founded the Young Kikuyu Association (YKA) in 1920, a non-militant group that worked for the preservation of African land. On joining, members were required to take an oath that bound them not to sell their land to strangers. *Was the reward for their services during the war to be the loss of their land, the imposition of the kipande and the increase of taxes?*²² they asked.

Others who served in World War I had gone back home and were frustrated by the lack of a system to reintegrate ex-military service men within their communities. The working class set up an organisation, that drew its membership from different ethnic communities, the East African Association (EAA), in 1921, led, again, by Harry Thuku. It was used to demand better wages and working conditions for Africans. A general strike was called, the first in Kenya and one of the earliest recorded on the African continent.”²³

In March 1922, Thuku was arrested and deported to Kismayu in present day Somalia. When he was released years later, he came back broken and served the colonialists. The EAA and Young Kavirondo Association (YKA) were banned and all attempts to form political parties on a national basis outlawed. So as to stem discontent, Africans were allowed to organise visibly, but only along ethnic lines, which made seeking a nationalist agenda more difficult and the organisations themselves weaker, leaving the colonialist stronger. It also laid the groundwork for the ethnically driven politics that drive Kenya to this day.

What can be defined as nationalism in Kenya then began, with the mobilising in the 1920s of communities in support of resisting imperialism and colonial oppression. This was long before the country that was to be known as Kenya existed and individual, communal and ethnic identities had shaped enough to coalesce into a nation. Plans

were mooted for an East African Association to unite the ethnic communities. Kikuyu, Luo and Luhya representatives met in Nairobi to talk about organising in defence of their rights.”²⁴

Based on the decision that banned national political parties, communities had no choice but to come together and set up ethnic-based parties. The foundation of ethnic political parties that would haunt the country that would be called Kenya decades later was born. Among the ethnic parties created then were the Kikuyu Central Association (KCA-1925), which advocated the return of land from the colonialists and stressed the importance of Kikuyu cultural values; the Akamba Members Association (AMA), which was initially formed to protest the colonial restriction on how many cows a family could own; the Taita Hills Association (THA) for the Taita; and the Young Kavirondo Association (YKA) for the Luo community, which rose against forced labour and taxes. These associations were led mostly by young people who now began to dabble in militant trade unionism and became very politically aware.

They translated this awareness by working with each other underground and in effect setting the foundation for a nationalist movement. Importantly for the national ideal they aspired to, they agreed on a common agenda for all ethnic groups to engage the government through the separate platforms they had been granted on the following; Loss of prime agricultural land to the colonialists; Racism, and in particular the class system that had the whites at the top, the brown people in the middle and the blacks last defining the approach to the provision of social services; confinement of Africans into marginal lands; issuance of the Identity Card, the “*Kipande*” that restricted movement of Africans to certain area and forced labour.²⁵

Importantly, they had critical foreign relationships. They established linkages with the Pan-African movements of Americans involved in the civil rights movement such as Marcus Garvey and W E B Du Bois, a move that considerably raised their international profile. Their set up of ethnically named and ethnically led organisations was overshadowed by their international profile and support, and by the underground African resistance movement whose common rallying call was removal of the colonialist rule and return of the land to the people from whom

it was taken. The Colonial Government became increasingly alive to the growing national and international appeal of the African resistance movement. And so in 1939, the leadership of KCA, AMA and THA was imprisoned without trial and the associations banned.

By then, World War II had begun, and again Africans were conscripted to fight. Those who came back in 1945 returned just like their World War I predecessors with great knowledge of what was going on in the outside world. While serving in the trenches, they were treated the same as British soldiers. They came home to find their families in native reserves. Fellow British soldiers were gifted with prime land in Kenya, some of it in the very place the Africans who fought alongside them had previously called home. The knowledge of the struggles against imperialism in Asia and the rest of Africa were to be put to use. There was agreement that a national movement would propel the agenda more urgently and that the permission of the colonial Government was no longer needed.

A national political party, the Kenya African Union (KAU), was formed. The banned ethnic parties continued to exist underground and one of them, KCA, now merged with KAU – which was headed by Jomo Kenyatta. The East African Trade Union Congress (EATUC), a militant anti-imperialist trade union organisation, was also formed, and a group of ex-World War II veterans known as the Forty Youth Movement (FYM) – *Anaake a Boote* – emerged, prepared to take back the rights of the Africans that the white people had forcibly taken from them.

On the international front, events were also happening that were to bolster the domestic agitation for change. India attained its independence in 1947, and the Chinese revolution rolled out in 1949. Of great significance was the decisive fifth Pan-African Congress held in Manchester, England, in 1945, which called for the immediate independence of Africa.

KAU, EATUC and FYM all strengthened their approaches so as to work together and began demanding, not just the giving back of the land, but complete independence. The colonial government dug in its heels, determined not to give up. Now the youths in these groups began to advocate for violence against colonialism. They stated that it

was the British who had forcibly occupied land that was not theirs – using violent methods – and therefore violence was a necessary and valid tool to remove them. They defined their resistance in a campaign of defiance against taxation and forced labour, and complete rejection of the legitimacy of colonial laws.

A mass underground movement had by now morphed into the Mau Mau. The British responded by declaring a state of emergency, banning organisations and arresting their leadership. Concentration camps and prisons were filled with the large numbers of arrested people. In response, Mau Mau formed its armed wing, the Kenya Land and Freedom Army (KLFA), which was led by Dedan Kĩmathi Waciũri. He is quoted as rallying his troops with the call: “It is better to die on our feet than live on our knees”.²⁶ The British created a home guard, composed of loyalist Africans. When the British began arresting the Mau Mau, they zeroed in on those who just a few years fought for the British in the World Wars. “Particularly targeted for arrest were World War ex-servicemen. The Mau Mau uprising claimed several lives but it spurred on Kenya’s independence.”²⁷

The government introduced substantial changes to land tenure. This included the Swynnerton Plan of 1954, which was used to reward loyalist home guards who supported the colonialists and punish the Mau Mau. The Swynnerton Plan laid the foundation for the key divisions among the Kikuyu Embu and Meru who had been classified together by the British and treated differently from other ethnic communities. They were given special passes and identity cards to differentiate them from others. They were treated as automatic Mau Mau suspects, and it was this treatment by the colonialists, which formed the bond that would create the Gikuyu, Embu and Meru Association (GEMA) a formidable political ethnic voting bloc in Kenya today.

The Kenya North of the Railway Line

The colonial government had enacted several laws specifically targeting the Kenyan North of the Railway line and its people. It began with the Outlying District Ordinance of 1902, which declared the Northern Frontier District (NFD) a closed area, with no contact with the rest of Kenya. The NFD was designated a hardship area and officers posted

there were reposted every three months. NFD consisted of Wajir, Mandera, Ijara, Garissa, Isiolo, Moyale and Marsabit. To move in and out of NFD required a special pass.

An arid and semi-arid area, it is home to pastoralist communities. By the very nature of their pastoralist way of life, colonial borders did not have much significance for the people of the North. NFD's borders separated, for example, ethnic Somalis into three countries Ethiopia, Somalia and Kenya, the Borana into two countries, Ethiopia and Kenya, the Turkana into three countries Uganda, Kenya and Sudan.

In 1933, a Stock Theft and Produce Ordinance – now Stock and Produce Theft Act Cap 355, revised 2012 – came into being followed shortly after in 1934, by the Special Districts (Administration) Ordinance of 1934. The ordinances applied to the NFD and Tana River, Lamu, Kajiado and Samburu Districts all of which were occupied by pastoralist communities. These two ordinances allowed the colonial administrators extensive powers of arrest, restraint, detention and seizure of properties of “hostile tribes”. The ordinances would set in place a culture of the legalised collective punishment of tribes and clans for the offences of individuals that would be perfected by post-colonial governments.

In 1960, Italian and British Somaliland had become independent and merged to form a single independent state of Somalia. As soon as political activities were legalised in 1960, the people of NFD formed a political party, the Northern Province People's Progressive Party (NPPPP). NPPPP's key agenda was secession of NFD from Kenya to join Somalia. It was proposed at the Kenya Constitutional Conference of 1962 by the Secretary of State that the British administration invite an independent Commission to assess the views of Somalis living in the NFD on whether they would want to secede from Kenya and be unified with fellow Somalis in Somalia. The Commission visited all NFD districts and heard oral submissions from 134 delegations. A referendum was carried out in 1962 that overwhelmingly indicated that the Somalis in Kenya wanted to be unified with their kith and kin in Somalia.²⁸

In spite of the results of the referendum, the British government found it difficult to grant secession to NFD, as did the Kenyan team led

by Jomo Kenyatta at the talks on Kenyan independence that insisted that Somalis in Kenya remained part of Kenya.²⁹ NFD boycotted the 1963 elections and 12 days after independence, a rebellion in the North began, demanding to secede becoming known as the 'Shifta' war. Somalia broke off diplomatic relations with Britain and supported the secessionists. The new Kenyan Government, two weeks after independence, declared a state of emergency on NFD. This state of emergency was to last 28 years.

After Independence, several amendments were made to the independence constitution and emergency laws as applied to NFD. This in effect meant that Kenya had two separate legal regimes, one for the NFD and the other to the rest of the country. Entry into NFD by people other than civil servants and members of the security forces was prohibited.³⁰

* * *

By the 1960s, political division was beginning to show based on the emerging needs for community inclusion. Daniel arap Moi, Jean Marie Seroney, Masinde Muliro and Ronald Ngala led the Kenya African Democratic Union (KADU), seen then as the party of the small ethnic communities while Kenyatta, Odinga and Mboya led the Kenya African National Union (KANU), which was widely perceived as the party of big ethnic communities. This was by design. KANU had positioned itself ideologically on the left as a nationalist party focusing on social democracy, Africanisation, justice and land distribution. Right wing, status quo KADU was essentially a creation of the European settler class that had campaigned vigorously to delay elections until "the Africans were ready". The ethnic community became a political tool with KANU described by KADU as the party of the big tribes, Kikuyu and Luo and KADU, that of the smaller tribes. Was this the beginning of Kenya moving from a colonial racist regime to political ethnicism? ³¹

The small ethnic communities in KADU were afraid of being rendered obscure by the 'numbers' of the big communities and called for *majimbo*, a devolved system of government. KANU however, supported a strong central government. The colonialists had proposed and supported *majimbo*, with a plan towards dividing the country into ethnic blocs including one that would be for the settlers, separate from

the independent state of Kenya. Nationalism was associated with a centralised system. KANU carried the day and formed Kenya's first independence Government with a Constitution negotiated in London. This Constitution was drafted with the help of American jurist Thurgood Marshall. The new Constitution supported *majimbo*.



Cartoon depicting the ethnic nature of the electoral campaigns in Kenya - Gado

Chapter 4

The Railway Divide: Post-Independence Leadership as an Accomplice

Our wish is to reconstruct our societies on new patterns and the quality and type of these patterns must also be examined carefully. What kind of political patterns do we want? What kind of society? What is to be the role of tribe in the new nation?

– Lawrence Sagini, speaking at a seminar on Racial and Communal Tensions, 1965

The effect of Britain on the formation and arguably, preservation, after independence of the entity known as Kenya is undeniable. The extent to which Britain is lauded or condemned for its role blur into each other. On the one hand, Britain assisted Kenya as a young and promising country to adopt constitutional principles and administrative institutions leading to the formation of democratic standards of statehood and participation in the international system. Many Africans got a sound education in Britain and there was a great focus on training, especially in the civil service. Those who had been trained took up leadership positions before and after independence.

The effects of colonialism

However, Britain left Kenya with many deaths of Africans and several people displaced from their lands in the wake of an imperialist policy that prioritised dividing and conquering people and a legacy of an artificially constructed nation state, made up of several ethnic nations. Britain had, as a colonial state, successfully imposed arbitrary borders between ethnic communities and exploited ethnic divisions to maintain power. Promoting inter-ethnic cohesion would have worked against her imperialistic goals. So, she played divide and rule, favouring ethnic communities, groups and individuals who supported her over others.³²

The British had not considered inter and intra-ethnic relationships that existed prior to colonialism among the Africans as important and created two sets of legislation to govern the people. Civil law, or the “language of rights”, was reserved for Asian and white races while customary law, the “language of tradition, of authenticity” applied to African ethnicities. This ironically ended up creating cohesion among those governed under the same law as well as a corollary schism among ethnically defined tribes cited as an explanation for present day conflict in many African states. Mahmood Mamdani describes this politicisation of indigenous people as the greatest of colonial crimes, with severe implications to the present day.³³

Indeed at the Lancaster House independence constitutional conference, the “small ethnic communities” under KADU expressed fear of being dominated by the “big ethnic communities” under KANU. Ethnicity therefore, began, even prior to independence, to present itself as a factor of politics. Statehood happened to Kenya mainly because of demands by the freedom fighters, with nationhood as an artificial structure that the Kenyans were to build. But independence was more important then, than worries over creation of a nation-state. The general assumption among Kenyans was that the nation would come after the state. This, creation of a nation is, to date, one thing Kenyans agree, that has proved extremely difficult to achieve. The ‘ethnic community’ has Kenya’s most consistent foundation of political organisation. This has resulted in deaths and displacements in violent conflicts between ethnic communities incited by their elite for political gain.

Jomo Kenyatta, 1963-1978

Kenya ushered in independence in 1963 with huge celebrations and euphoria that promised a Kenya for all Kenyans. The British Union Jack was lowered, the Kenyan flag hoisted. The words of the new national anthem, based on a traditional lullaby tune of the Pokomo, spoke to the aspirations of the country called Kenya.

The Kenyans who had fought so hard for independence were conscious that the opportunity to build on nationalism by putting in place ethnic and race relations’ legislative frameworks and strategies was now. This would have guaranteed equal access to opportunities

and resources and contributed to peaceful coexistence of Kenya's diverse ethnic communities. This was not to be. Soon after the 1963 celebrations, things began to unravel.

First, there was the state of emergency in North Eastern Province.³⁴ Political alliances then began crumbling as early as 1964. The system of *majimbo* was steadily eroded in many ways, including starving the regions of budgetary allocation in contrast to Constitutional provisions.³⁵ The *Majimbo* Constitution was replaced by one that converted Kenya into a Republic with a central government and KADU was absorbed by its rival political party, KANU making Kenya a one party state that was finally converted into a *de jure* one party state in 1982, when the Constitution of Kenya was appropriately amended by the introduction of a new section 2A which stated that: "There shall be in Kenya only one political party, the Kenya African National Union."³⁶

Kenya's independence came with some inherited colonial institutions and cultures such as the Police Force and Prisons Service, which facilitated structural injustices such as deprivation of land, unequal access to opportunities and general exclusion of the masses all of which contributed to deepening ethnic divides.³⁷ These systems maintained the status quo. The persistence of major land issues among ethnic communities predominantly in places where the British settled is one of the colonial government's major legacies. The colonialists retained much of the land such as Lord Delamere's 100,000-acre ranch and Ewart Grogan's 25,000-acre holding at Mau Summit, displacing, to date, thousands of Africans.³⁸

Some of the land was given or sold to African elite and colonial loyalists in the independent ruling party throughout the country, especially in Central Province, Rift Valley and Coast Province. Writers like Ngugi wa Thiong'o who had written about the ills of the colonial regime now began writing about the ills of the independence government.

Kenyatta, in a way that would be replicated by Moi after him with disastrous results for managing the diversity of the country, increasingly filled key public positions with people from his ethnic community. This in turn created a public administration defined by individual

loyalist approach. The public and private fall-outs of political parties contributed to ethnic and racial mistrust. Coupled with the ethnic and race tensions, political competition intensified leading to the erosion of the party system and replacement with the personality cult.

The colonial and Kenyatta Governments implemented policies that ensured that development was concentrated in the so-called high potential areas, sometimes with deliberate effort to suit ethnic and other vested political interests. In 1965, the Government drafted Sessional Paper No. 10 of 1965 titled “African socialism and its application to Planning in Kenya.”

The Sessional paper states in part:³⁹

One of the problems is to decide how much priority we should give to investing in less developed provinces. To make the economy as a whole grow as fast as possible, development money should be invested where it will yield the largest increase in net output. This approach will clearly favour the development of areas having abundant natural resources, good land and rainfall, transport and power facilities, and people receptive to and active in development. A million pounds invested in one area may raise net output by UK£20,000, while its use in another may yield an increase of UK£100,000. This is a clear case in which investment in the second area is the wise decision because the country is UK£80,000 per annum better off by so doing and is therefore in a position to aid that first area by making grants or subsidised loans.

The Sessional paper goes on to explain this reasoning:

“The purpose of development is not to develop an area, but to develop and make better off the people of the area. If an area is deficient in resources, this can be done by: Investing in the education and training of the people, investing in the health of the people, **encouraging some of the people to move to areas richer in resources** and developing those limited resources that are economic.”

This approach to development further disadvantaged Kenyans from the North, already under a state of emergency. The sessional paper, was in effect asking of the people in the North to abandon pastoralism as a way of life, and move to “areas richer in resources”. For a pastoralist, camels, goats or cattle have as much significance as land does to an

agriculturalist. The isolation of the North and arid and semi-arid areas as “areas deficient in resources” led to a huge sense of exclusion, which became a threat to national cohesion, as investments in education, security; water and infrastructure were not made. The provisions of the Sessional Paper to support human resource development in those areas were also not met by the Kenyatta administration.⁴⁰

On the issue of ethnic communities, Tom Mboya, one of the drafters of the Sessional Paper Tom Mboya had this to say”,

In Africa the kind of economic social and political institutions that make sense must find their meaning in the African setup in that any new organisation, which we bring up, must be based on some traditional concepts to life. It must not just be imported from outside. For example we are clan minded, we are tribal minded in that we are communal in our concept of life. Now it is necessary that our new institutions are based on this approach what we have called in our definition of African Socialism mutual social responsibility. That is that a person is not just an individual he is part of a system, he is part of a community, he has responsibilities within that community, he has duties to perform in that community but in turn the community has also got responsibilities to him. They have duties towards him and his children. This is a very important concept.⁴¹

Tom Mboya’s argument raises a crucial questions: was this way Kenya’s founding fathers did not see the need for cohesion and integration in 1963? Public service, which could have been ideally the most suitable place for employing people from diverse Kenyan backgrounds, became the reason for rising resentment, ethnic suspicions and tensions. Political patronage became easy to execute, with resources to develop particular areas easily influenced by ethnic communities represented in the public service.

Meanwhile, the towns among the railway line thrived as transport for the people living along them and their goods to market places was eased. Schools, hospitals and other amenities were built along the railway line. Kenya became an economic powerhouse and increasingly took pride of place as the country to watch in the region. Kenyatta travelled around the country, rallying Kenyans with the clarion call of *Harambee!* (*Harambee* meant let’s pull together).

Meanwhile, tensions were brewing on the race front. The reason behind this included the *Africanisation Policy*, put in place to ensure that Kenyan Africans could be placed in positions where they could effectively compete for jobs and positions previously held by people of white or brown colour in the colonial class system. At a seminar titled: “Racial and Communal Tensions in 1965,”⁴² Lawrence Sagini giving the opening remarks summarised the race and ethnic dilemma in this statement.

“After political Independence, the biggest problem facing African countries is that of reconstruction. Politically, this initially meant transferring power and influence from former colonial powers to the Africans. Administratively, reconstruction initially means Africanisation. But even here, we have run into several problems such as tribalism – with some groups feeling that they are not getting their fair share of the cake; ‘brotherisation’ and at least in Kenya, there has even been the argument as to whether Africanisation should mean ‘localisation’ or ‘blacknisation’. Furthermore, African civil servants have replaced many Asian civil servants; and other qualified Asians find it difficult to get employment in the civil service. This is because the administrative balance has to be adjusted in favour of the Africans to reflect the new political changes. But this is beginning to mean that in countries that are so short of trained manpower, some qualified citizens cannot get employment because they possess the wrong colour pigment!”

Sagini qualified his above statement with an example.

“Let us look now at the economic field. It is here that the process of reconstruction is likely to be most difficult and painful. Are we simply to take over all non-African owned businesses? How do we bring the African businessman into the centres of Nairobi, Kampala or Dar es Salaam? How do we make sure that public utilities such as road transport and power are run in the interests of the public and not in the interests of a few individuals? (...) “But it would be short-sighted to look at the problem of reconstruction purely in quantitative terms i.e. how much salary, how much power and influence, etc. The qualitative aspect of reconstruction is even more important. Our wish is to reconstruct our societies on new patterns and the quality and type of these patterns must also be examined carefully. What kind of political patterns do we want? What kind of society?”

“What,” Sagini asked, “is to be the role of ‘tribe’ in the new nation?”

In 1966, Kenyatta had a public fall-out with his Vice President, Jaramogi Oginga Odinga. Initially, the fall-out was based on ideology

with Kenyatta leaning towards capitalism, and Odinga, socialism. This was the era of the cold war. Their ideological differences translated into Jaramogi being closer to the Soviets and Kenyatta to the British and Americans. The cold war provided Western nations with the perfect scenario for post-colonial manipulation through economic programmes of conditional aid, which further impeded the formation of a Kenyan nation. Kenya maintained close economic ties with Britain. The USA and USSR would capitalise on the fall-out between Kenya's first President and Vice President, Jomo Kenyatta and Jaramogi Odinga, alternately supporting and undermining them throughout the cold war, especially through overseas training, foreign aid and technical advice.

Writing of this period, Simeon Nyachae, a retired Chief Secretary in the civil service, later minister and politician, traces the permanent cracks that exist in Kenya's ethnic unity to this political bickering.

"Kenya remained a united country until 1966 when cracks started emerging due to squabbles among leading politicians."⁴³

The two leaders tragically succeeded in drawing their ethnic communities, the Luo and Kikuyu, into hate campaigns against each other. Since then and up to date, the story of the Luo and the Kikuyu is littered with betrayal, expectations, and is never ending to the extent that it usually threatens to overshadow the story of Kenya. Significantly, before World War II, the two communities had never interacted and therefore the intensity of their loathing for each other today cannot be explained by a dispute over a boundary or shared resources. Each community constructed a narrative of hate about the other that has been handed down, to the present day, like a mantle of inheritance, won fittingly around the shoulders of the Luo and Kikuyu, from generation to generation. In the same year, 1966, the Constitution was amended to legalise detention without trial. Odinga was detained without trial in 1969.⁴⁴

Both communities waged propaganda wars against each other that were to have serious consequences on the political scene. Tensions between the two communities came to a head during a visit by Kenyatta to Kisumu in 1966 to open a hospital that had been built by the Soviets. At the ceremony, the Presidential guard opened fire on an

agitated crowd killing scores of people whose number is still disputed today. The fall-out between the two communities further deteriorated when Tom Mboya, a charismatic Luo politician in the Kenyatta camp, was assassinated on 5th July 1969.

Detentions without trial were now rampant, cutting across all communities, including some people from the President's ethnic community, who were perceived to oppose government policies. Tragically, Kenyans did not look far back enough to understand that what was playing out had its roots in colonialism or solve the issues.

Jomo Kenyatta, writing in his pivotal book, *Suffering without Bitterness: The Founding of a Nation*, had stressed the de-emphasisation of 'tribe' as a requirement to the creation of a nation state, which unfortunately his Government never succeeded at.⁴⁵

Daniel arap Moi, 1978-2002

When Kenyatta died in 1978, his Vice President, Daniel arap Moi took over. Moi promptly pledged that he would “*Fuata Nyayo za Kenyatta*” which meant follow in the footsteps of Kenyatta. This pledge was quickly coined to a shorter slogan, *Nyayo*, footsteps. Kenyatta had rallied the country with the call of *Harambee* while using a flywhisk as his symbol of power. Moi adopted a club (*rungu*) fashioned in ivory, instead, rallying the crowds with the same rallying call of *Harambee!* What changed was the crowd's response, which now became *Nyayo!* The slogan became the pet name that Kenyans, initially fondly, called him. He started off with a populist approach, releasing Kenyans who had been detained without trial by Kenyatta.

With Moi in charge, the country had an opportunity, as it did in 1963, to start on a clean slate and to right past wrongs through policies that promoted inclusivity and assured citizens of all ethnic communities, equitable access to resources and opportunity. Moi started off by declaring himself as a “non-tribalist” and banned ethnic-based societies such as the Gikuyu Embu and Meru Association (GEMA). It was understandable why Moi would be wary of GEMA. Njenga Karume, a Kikuyu, and GEMA's most famous chairman writes of the GEMA of the 1970s:

Many people, including the tribes that were supposed to be members, were not aware of what it was, or its agenda. It was seen by many as a tribal alliance that gave the Mount Kenya communities leverage to dominate other tribes and, by extension, the whole of Kenya. While member tribes cautiously welcomed the founding of the body with a combination of reluctance and enthusiasm the rest of Kenya's tribes were definitely not pleased. The reason for this critical reception was that the Kikuyu already dominated all areas of governance and commerce, and every place one went was either headed by a Kikuyu or was manned by a majority from that tribe.⁴⁶

Moi was from the Tugen, a sub-group of the Kalenjin. The Kalenjin were a collection of smaller ethnic communities and needed to partner with other smaller groups to sustain dominance against the larger ethnic communities. This was a throwback to that which had happened in 1960, when KADU had been formed to challenge KANU. Although Moi was a good disciple to Kenyatta, he had no time for the Kikuyu elite.⁴⁷

Moi was under no illusions that he was President of one country but of "a nation of ethnic nations". This was a position he exploited politically. His biographer, Morton, explains Moi's understanding of the make-up of the Kenyan ethnic and racial nations;

But if the foundations of independence were built on shifting sands – a problem by no means unique to Kenya – the rest of the building too, is badly built and prone to subsidence. Even the cultural and economic mortar, which folds the whole edifice together, the stuff that binds a people to a government and a nation, seems to be largely absent. While the political elite is Kenyan, the economic mobility is Asian and White, with a significant smattering of those Kikuyu who made fortunes in the first year of independence. At the first whiff of trouble those who own the country yet are alienated from the political process head for Jomo Kenyatta International Airport and their overseas bank accounts – hardly a recipe for economic prosperity, long term investment or faith in a recently independent government.

Culturally, the focus of allegiance for many Kenyans is the tribe rather than the nation, a tension, which is made manifest in the perpetual debate about central government versus 'majimboism', or regionalism and in the conflict between Westernised urban dwellers and the more traditional, semi-pastoral rural people. This conflict is expressed politically in fragmented tribal based political parties, where tribe, not ideology, determines party

allegiance. Moi is acutely aware that, because the state was artificially formed, the level of patriotism and national consciousness is low. Since independence, much of the sense of nationality has had to be created, and then reinforced through such means as the Harambee self-help programmes, in order to bind Kenyans to the country."⁴⁸

Moi, like his predecessor, ruled with an iron hand. He decreed that all organisations in Kenya bearing "tribal names" drop them. Moi began a process of having institutions, organisations and schools named after him, or his pet slogan, *Nyayo*. Hundreds, if not thousands, of new institutions began to be named and even some old ones renamed after him. Here is a story of the extremes Moi went to in the renaming business. "To the chagrin of Gor Mahia Football Club, Moi, in 1978, renamed them "The Nyayo First Eleven". They never used the name!"⁴⁹

Moi however, perfected ethnic-based politics by filling up top public positions with members of his ethnic community. This style of politics contributed to the further disintegration of the concept of nationhood.

In 1982, there was an attempted coup d'état against Moi. Jaramogi's son, Raila Odinga, was one of those arrested for plotting the coup d'état and detained without trial. Moi became increasingly intolerant and unpredictable.⁵⁰ He outlawed multi-party politics making Kenya a *de-jure* one party state. There was widespread harassment of those perceived as anti-government and a resumption of detention without trial. Torture chambers were built at Nyayo House infamously named after his "Nyayo" slogan and name, situated right in the middle of Nairobi city. Several people were held and tortured there. Many were killed and several others tried at night in 'sedition trials'.⁵¹ The dungeons still exist, as part of the 24-floor Nyayo House building, used as Government offices.

Moi was given to long public tirades against "enemies of the state" that typically ended up telling Kenyans that they had to toe the line:

I call on all ministers, assistant ministers and every other person to sing like parrots. During Mzee Kenyatta's period, I persistently sang the Kenyatta tune until people said, 'This fellow has nothing to say except sing for Kenyatta.' I said I did not have ideas of my own, who was I to have my own ideas? I was in Kenyatta's shoes and therefore I had to sing whatever

Kenyatta wanted. If I had sung another song, do you think Kenyatta would have left me alone? Therefore you ought to sing the song I sing. If I put a full stop, you should put a full stop. This is how the country will move forward. The day you become a big person, you will have the liberty to sing your own song and everybody will sing it.⁵²

– President Daniel arap Moi, 13th September 1984

In the universities, there was deliberate harassment of academia and interference with what was taught. The arrested were not discriminated by ethnic community, indeed Tirop arap Kitur, an ethnic Kalenjin, like President Moi, was detained without trial in 1986 and released in 1992.

In private, hundreds of Kenyans were being rounded up and detained, some to disappear and never to come back. In public, Kenyan children, were tuned to sing songs about our beloved President, even as parents spoke in whispers at home for fear of arrest.

National days were flamboyant displays of loyalty to Moi as they had been for Kenyatta. Choirs sang fawning songs in praise of Moi, calling him Farmer Number 1, Teacher Number 1, Everything Number 1. Schoolchildren memorised these songs and sang their hearts out for the President.

Moi frequently extolled Kenyans to look beyond the borders and marvel at the diversified state of the Kenyan nation, whose citizens peacefully coexisted within its plentiful borders. Referring to himself as the ‘Professor of Politics’, he asked Kenyans to look at the mess in Somalia, the chaos in Northern Uganda, the border wars of Ethiopia and Eritrea, the unending wars in the Great Lakes region, DRC, Rwanda, Burundi and the Sudan. Kenya was ‘truly an island of peace in a sea of turmoil’ he constantly said.

Moi built several educational facilities; many named after him, but instituted an education policy called the “quota system” that was to play a huge role in damaging Kenya’s social fabric. The policy on the quota system classified schools at the district level in regards to admission into secondary schools. The policy stipulated that provincial schools would admit 85% of their students from their localities. One of the arguments for this policy was that, since it was the locals who had built the schools, it was only fair that their children benefit. The

political reason was that, the colonialists had built the best schools along the railway line, many of them in Kikuyu, Luhya and Luo land, the ethnic communities that opposed Moi most consistently. The policy that Moi put in place meant that a child would be educated in a local primary school, secondary school and even university in her or his home region. This person would become what many people would later refer derogatorily as a 5-kilometre radius Kenyan, a Kenyan whose worldview was informed by the 5-kilometres around him.

These students would not be exposed to people from different communities and could not benefit from social and cultural diversity of others and learn to tolerate and appreciate difference. The students and the communities they came from were balkanised into ethnic enclaves of people who looked, thought, and spoke like them. Unlike the earlier generations, the children who went to secondary school from the mid-1980s did not have the opportunity to school in other regions. This generation is easy to influence negatively or positively and is also prone to believing stereotypes, having not been exposed to other people's cultures.

Northern Kenya continued to remain on the periphery of the rest of Kenya. Human rights abuses against the people of the North continued largely due to the effects of the emergency laws and the failure to invest in any form of development and infrastructure. In 1980, there was the Garissa massacre allegedly perpetrated by security forces. In February 1984, security forces launched an operation in Wajir targeting the Degodia clan of the Somali community. Other instances of extra-judicial killings and collective punishment include those in Malka-mari, Garse, Derakali, Dandu and Takaba areas of Mandera District.

The Government set out to register all Kenyan Somalis and expel those found to have sympathy with Somalia. This was done through a verification exercise, carried out by vetting committees made up of selected elders and members of the provincial administration and civil service. Northerners had to prove their citizenship or be effectively declared non-citizens. Those proved to be Kenyans were issued with pink cards while the rest were deported to Somalia. The Kenyan Somalis were deeply hurt by this discrimination.

There was some good news though with Section 127 of the Constitution, which laid the foundation for the state of emergency, repealed on 29th November 1991. The North Eastern Province and Contiguous Districts Regulations, 1966, was also repealed in 1991. The Outlying District Act and the Special Districts (Administration) Act were repealed under the Statute Law (Repealed and Miscellaneous) Amendment Act of 1997. The repeal of these laws was a big step forward in restoring to the people of the NFD their fundamental rights and freedoms as guaranteed in chapter five of the Constitution.

There was continuity in Moi's administration, just like Kenyatta before him, domination of the then state-owned media, the only sources of news and information available then. All news bulletins began with what the President had spent the day doing. There was further damage done to the 'Kenya nation project' with the creation of political districts to serve previously 'unrecognised groups' such as the Suba, Teso, Mbeere and Kuria that enhanced the unequal distribution of resources.

Meanwhile, increased pressure was being brought to bear on the State by civil society and religious organisations, politicians, academics and foreign countries to end excessive aggression against citizens and reintroduce multi-party politics. Finally, the Government repealed Section 2A with multi-party politics reintroduced in 1991. Moi had asserted several times before that the country should allow him to preside over a single party state as a multi-party State would be violent and ethnic communities would turn on each other. This seemed to be the signal of Kenya's myth of the 'island of peace in a sea of turmoil' beginning to unravel in violent ethnic conflicts in the Rift Valley. The violence pitted Moi's community, the Kalenjin against mainly the Kikuyu, Luo and the Kisii. More than 2,000 people died in this violence.

There were underlying issues between ethnic communities, especially on the land question. Moi had faced resistance and rebellion from Rift Valley particularly from the community of the Maasai as personified in politician William Ole Ntimama and by politicians Jean Marie Seroney and Taita arap Towett presenting the Kalenjin complaints. Towett, Seroney and Ntimama's key complaints were in

regard to failure in redressing the land question and particularly over the settlement of the Kikuyu and Kisii communities in the Rift Valley. The three wanted the Kikuyu and Kisii to leave the Rift Valley.

Parliament appointed a 13-member Parliamentary Select Committee on 13th May 1992 by a resolution of the National Assembly passed on 29th April 1992 with the mandate to investigate “Ethnic clashes in Western and other parts of Kenya”. The chairman of the committee was Kennedy Kiliku. The terms of reference of the committee were to: Investigate the root causes of the clashes that had rocked the country since 1991; Identify the person(s) who might have perpetrated or participated in the clashes and in this regard; Identify politicians and political parties, organised groups, general public, administration police and security personnel and local and international media involved in or responsible for the violence, and; Make recommendations that would help to avert such clashes in future.

The Kiliku committee submitted its report to Parliament in September 1992. The committee conducted several hearings across the country and interviewed some 836 witnesses. The report laid the blame for the chaos on politicians, political parties and security personnel, among others. It fell short of naming specific perpetrators and also did not recommend measures to be taken against the alleged instigators and perpetrators of violence.

In the countdown to the 1997 elections, the conflicts spread to the Coast Province with disastrous consequences. A police station in Likoni was burned down and hundreds of what the locals called ‘non-indigenous Coast people’ were evicted from their homes. Many were killed and wounded. It was widely believed that the KANU Government was behind the clashes.

The media labelled these Moi era electoral conflicts ‘politically-instigated tribal clashes’ whose purpose was to create fear among the electorate. On many occasions, the conflicts were timed such that the communities moved out on the eve of the election so that they would not vote; there would be no violence if they came back after the vote was counted. This was when the Justice Akilano Akiwumi-led Commission was set up. The Commission presented its report to President Moi on 19th August 1999. The report was not made public

and its contents remained secret until the AG finally published the report on 18th October 2002.

The specific terms of reference were:

1. To investigate the tribal clashes that have occurred in various parts of Kenya since 1991, with a view of establishing and/or determining- the origin, the probable, the immediate and the underlying causes of such clashes; the action taken by the police and other law enforcement agencies with respect to any incidents of crime arising out of or committed in the course of the said tribal clashes and where such action was inadequate or insufficient, the reasons therefore; the level of preparedness and the effectiveness of law enforcement agencies in controlling the said tribal clashes and in preventing the occurrence of such tribal clashes in future. To recommend: prosecution or further criminal investigations against any person or persons who may have committed offences related to tribal clashes; ways, means and measures that must be taken to prevent, control, or eradicate such clashes in future; to do, inquire into, or investigate any other matter that is incidental to or connected with the foregoing.

The Judicial Commission's report said of this period during which multi-party politics was introduced;

“By 1991, Kenya had already been independent for twenty eight years. It was economically, and also because of its large European and Asian population, the most developed and modernised country in Eastern Africa, notwithstanding that for nearly twenty two years before that, it was a one party state and which was seen to favour the Kikuyu and then the Kalenjin. The year 1991 witnessed the inexorable struggle for, and genesis of, a westernised democratic form of government. This led to the amendment of the Constitution of Kenya by the Constitution of Kenya (Amendment) (No.2) Act, 1991, which entered into force on 20th December 1991, and which repealed section 2A of the Constitution.

Jaramogi Oginga Odinga's son, Raila Odinga surprised many when he supported the Moi government in 2000, leading to a merger

between his National Development Party (NDP) and Moi's party, KANU. Moi appointed Raila, a man he had previously detained without trial, Energy Minister, in June 2001.

When KANU elections were held in February 2002, Raila Odinga was elected the Secretary General. In October 2002, when President Moi announced that he was supporting Uhuru Muigai Kenyatta, son of Jomo Kenyatta, to succeed him as President, Raila Odinga and other top politicians, including Kalonzo Musyoka and George Saitoti, quit KANU and supported the opposition candidate Mwai Kibaki, through the little known Liberal Democratic Party (LDP). There were other presidential candidates such as Simeon Nyachae who was leading Ford People.

By December 2002, when the opposition headed by Mwai Kibaki, a Kikuyu, and Raila Odinga, a Luo, united, the political equation changed. The group formed a coalition, National Alliance of Rainbow Coalition (Narc). Their rallying call was: *Yote yawezekana, bila Moi!* Everything is possible without Moi.

Mwai Kibaki, 2002-2007

In 2002, the opposition parties finally learnt that they could never bring down KANU and Moi so long as ethnic-shaped politics divided them. They united under the umbrella of National Alliance of Rainbow Coalition (Narc) to run against KANU candidate Uhuru Kenyatta, (Kikuyu) and his running mate Musalia Mudavadi, (Luhya) and son of Moses Mudavadi, former powerful Minister in Moi's Government. There was another strong opposition party Ford People, led by Simeon Nyachae, (Kisii). Each of the Narc leaders mobilised their ethnic blocs to vote for a joint Presidential candidate, Mwai Kibaki, (Kikuyu) and his running mate, Michael Kijana Wamalwa, (Luhya). Particularly visible was Raila Odinga, (Luo) who after decamping from KANU, was literally in charge of the Kibaki campaign. The Kibaki team won. For the first time, it did not matter to Kenyans that the two leading presidential candidates – Kibaki and Uhuru – were both Kikuyu. In voting for candidates from one community, the country seemed to have overcome its ethnic divisions and was willing to forge ahead as one nation.

The elections were peaceful unlike the previous ones, when the violence preceded every poll. Notably, this time round, Uhuru Kenyatta, a Kikuyu, had the support of outgoing President Moi, (Kalenjin). The Kalenjin community voted overwhelmingly for Uhuru. This partly illustrates that ethnic communities are mainly incited to violence or called to peace against each other by politicians. Politicians have a lot of power over the ethnic blocs voting for them. Part of the reason why it is easy to mobilise ethnic communities against each other during elections is that the electoral system in Kenya is based on constituencies whose boundaries follow ethnic lines. It is, therefore, easy to isolate ‘non-indigenous people’ when it is perceived that they will not vote for the ethnic leader or choice of the so-called ‘host community’.

After the election, Narc created an all-encompassing cabinet. Kenyans were wildly optimistic and were rated in a Gallup International opinion poll of 2002 as the most optimistic people on earth. The new Government had space for everyone. Free primary education was introduced and millions of children flocked to school. President Bill Clinton of the US was famously quoted saying that the person he would most love to meet was Kenyan President Mwai Kibaki, who had succeeded in getting millions of children into school for free.

Northern Kenya finally got the attention it deserved with targeted development programmes. A Ministry of Development of Northern Kenya and other Arid Lands was established as well as regional abattoirs to promote economic activities for pastoralists. A Constituency Development Fund was established.⁵⁴ *The Stock Theft and Produce Act that provided for the collective punishment of pastoralists in Northern Kenya and the Indemnity Act were however not repealed.*

* * *

In 2005, Nelson Mandela visited Kenya after retiring as South Africa’s President. His wife Graca Machel accompanied him. Mandela showered praise on Kenya and President Kibaki’s government for consolidating peace and opening up democratic space. He referred to Kenya as a good example of an emerging democracy, which should be emulated by other countries across the region. Mandela praised Kibaki for his

leadership and cited the free primary education programme as key to empowering the Kenyan youth to cope with modern challenges.⁵⁵

There were new rules for *matatu* owners. *Matatus* are privately owned mini-buses, loud and notorious for accidents and killing hundreds of people every year. The new rules brought order and improved public safety. Kenya was on a roll. This was now the perfect opportunity to create policy frameworks for managing Kenya's diversity that would promote peaceful coexistence and guarantee access to national resources and equal opportunities.

However, this was not to be as big trouble was brewing on the national front. Unknown to the general public, the opposition parties that ran against Uhuru Kenyatta, had, prior to the election, signed a Memorandum of Understanding (MoU), which defined a power sharing formula between Mwai Kibaki and Raila Odinga. Both led separate factions of Narc. The memorandum was not honoured and there was considerable tension as Narc, which had promised a Constitution within 100 days, reneged.

There was also considerable speculation on the state of the President's health with fears that a "Kikuyu cartel" was running affairs at State House. The ethnic divisions began again. It soon became clear that Kenyans, in voting in Kibaki, had just voted against Moi; but not for a united nation, or a new order. The rebirth of a Kenyan nation was stillborn. Ethnicity remained the key-mobilising factor.⁵⁶

Soon, several members of the Cabinet distinguished themselves from Narc and, together with their ethnic supporters, remained in LDP led by Raila Odinga. The LDP was to test its mettle against Narc in 2005 when it led a campaign against the Government preferred Draft Constitution in partnership with KANU led by Uhuru Kenyatta. The campaigns were marred with ethnic slurs from both sides.

"During the referendum campaigns, the resurgence of ethnic-based hate speech and the resulting high political tension in the country was disconcerting. In fact, ethnicity threatened to overshadow the whole constitutional review process and there was great concern about what would happen in the aftermath of the referendum. Temperatures have been stoked to beyond boiling point yet Kenyans would still have to live together as part of one nation and not as balkanised communities. The big question thus

became whether the divisive campaigns based on ethnicity represented a step back in terms of consolidating the country's democracy.”⁵⁷

The 4th July 2005 referendum vote went overwhelmingly against the Government preferred Draft Constitution and left the country divided into two clear blocks of mainly the Kikuyu on one side and the majority else on the other. Communities were mobilised by politicians around the issues that had been unaddressed and that had bedevilled Kenya since independence, such as deprivation of land, unequal access to opportunities and general exclusion of the masses. On the issue of land, the Government had, in 2002 commissioned *the Report of the Commission on illegal and irregular allocation of public land* headed by Lawyer Paul Nding’u. The recommendations in the report, that later came to be popularly known as the Nding’u Report, were not implemented. Part of the reason was that many of those named in the report were still in positions of authority.

Other issues included those of Northern Kenya such as tensions between agricultural and pastoral communities, lack of pasture and marginalisation. The ethnic-based politics and slurs that continued unabated should have served as a warning to the eruption of violence that was to come.

There was a new method of transmitting hate that had previously not been used in the referendum – through technology. In the run up to the 2007 General Elections, incitement to violence and negative ethnic jokes and insults through phone text messages and emails were the norm. There were no specific laws on hate speech and conflict prevention. “Alternative communication, whether via Internet or cell phone text messages, FM radio, rumour or popular cultural media enabled relatively easy and swift information transmission and collaboration between social actors.”⁵⁸ Communities in traditional ‘electoral violence prone areas’ in the Rift Valley, were already by mid-2006, receiving messages, sometimes directly from their neighbours asking them to leave. Hate leaflets were issued outlining which communities must leave.

The fact that Raila Odinga headed ODM and Mwai Kibaki headed PNU was depicted as a contest between the Luo and Kikuyu. The ethnic

slurs recalled the hatred narrative between the two communities, which had been handed over throughout the generations. It is often said that Kenya moves forward when the Kikuyu and the Luo come together, as happened in the struggle for independence and as happened in the 2002 violence-free elections. This narrow interpretation, however, has its shortcomings in that it belittles Kenya's other communities.

It is said that when two elephants fight it is the grass that suffers. In this case the grass was Kenya. By 2006, the country was ripe for large-scale ethnic violence.

Kibaki's 2007 contested victory

When Mwai Kibaki was declared the winner in what was touted as one of Kenya's most peaceful elections, violence broke out in areas along the railway line. This was the most developed part of Kenya that included Coast, Nairobi, Western, the Rift Valley and Central Provinces. Surprisingly, the semi-arid and arid areas in the North mostly prone to violence were at peace and went about their businesses as usual. The violence put paid to any meaningful interaction among many communities, which had hitherto, lived in peace.

In his book, *Interventions: A life in War and Peace*, Kofi Annan describes the election and the subsequent violence as being split along ethnic lines, with ODM running a campaign essentially dividing the 42 ethnic communities in the country into two main opposing camps, described as *41 against 1*, that is all 41 Kenyan communities against the Kikuyu.⁵⁹ However, the crux of the political and ethnic rivalry was economic: the election crisis ignited long-standing ethnic rivalries over access to fertile land and other important resources. The decades of economic marginalisation; either real or perceived had bred discontent among and within communities.

In 2007, Kenya had attained 44 years since independence. Despite the political divisions, Kenyans exhibited many traits that affirmed their 'Kenyanness'. There were strong friendships, marriages and collaboration across ethnic and racial communities. However, rather than the different cultures and histories distilling into a Kenyan nation, the country had developed very strong ethnic sub-nations. These

differences in the sub-nations (read ethnic groups) were manifested through discrimination based on race and ethnicity.

The issues in Kenya run deep. During the colonial period, the colonialists had created native reserves along ethnic lines that restricted integration leading to divisions along ethnic, class and religious lines. Political parties had been formed along ethnic lines and not as a catalyst towards nation building, exemplifying the country's historical baggage of ethnic divide. The nation-building project that began with inclusivity after independence was short-lived, as decolonisation did not solve ethnic differences and the ethnic schisms designed by the colonialists were too cleverly situated within structural and systemic systems to be dissolved overnight.

The Independence Government of 1963 and the Narc Government of 2002 had been the closest Kenya had come to exemplify a nation. The Narc Government had in its initial stages incorporated a more equitable political balance that gave equal voice to all Kenyans. After the fall out between the then President Mwai Kibaki and Raila Odinga in 2005, the newly-carved positive space for open discussions closed. The Constitution as it existed then was not a solution as it was too rigid and, indeed, was one of the bones of contention. The enforcement of the Constitution would not have done much to uphold non-discrimination.

The ethnic differences would have tragic consequences when applied to the electoral system in which the winner together with his/her ethnic community takes it all. It increasingly meant that citizens saw themselves and were seen by politicians in terms of numbers and their corresponding might as far as electoral might is concerned. Politics has been highly personalised with citizens voting for the person seen to represent their ethnic interest. Issues did not define politics, hence, no criteria to hold politicians accountable.

All these factors contributed to the violence that would change Kenya radically and create NCIC that I would join as a Commissioner.

PART II:
PROJECT KENYA: MEDIATION
EFFORT AND OUTCOMES



Chapter 5

Annan, Graca and Mkapa trio: Journey to the National Accord

If you are emotionally attached to your tribe or political leaning to the point that truth and justice becomes secondary considerations, your education is useless. Your exposure is useless. If you cannot reason beyond petty sentiments, you are a liability to mankind.”

– Dr Bala Usman, Nigeria

On 22nd January 2008 Annan finally arrived in Kenya. He found a desperate country engulfed in violence. He would later observe: “A vast number of Kenyans were in desperate poverty, and their fate was being won or lost in what seemed a cheater’s game of tribal musical chairs. The ultimate governor of life in Kenya was not any rule by law but the rule of bloodline – and it was along these same tribal veins that blood now poured.”⁶⁰

On 23rd January 2008, I was accosted by a mob while driving home to Woodley. They jumped up and down on my car’s bonnet screaming hysterically. They set the nearby telecommunications building, referred erroneously to in Kiswahili as Posta meaning post office, on fire with petrol bombs as they shouted ‘*baki yetu!*’ (Our rights!) I survived by yelling back “*baki yetu*” along with them. I arrived home sweat soaked, hardly believing my luck at having come out of that incident alive.

On the same day, there was a surprise visit from Uganda’s President Yoweri Museveni. Like President Kufuor before him, he met Kibaki and Raila separately. Museveni issued a statement that said that in principle, an agreement had been reached to establish a judicial commission that would investigate the vote rigging claims. Both sides promptly disowned the supposed agreement. ODM said they did not want a power sharing deal fronted by Museveni while PNU said ODM was now too tainted by killing innocent people.

On the same day, 23rd January, Annan scored his first success when he convinced Raila to call off the mass action protests that were leading to violence. He scored his second big success on 24th January, when he convinced Raila and Kibaki to meet for the first time since the crisis began. He issued an encouraging press briefing saying that they were pushing for a peaceful solution. Both Kibaki and Raila issued statements affirming that they were indeed working towards a solution and appealed for calm. Calls thanking and encouraging Annan inundated FM radio stations. Peace prayers began to be held countrywide for Kofi Annan and Kenya.

But the calm was short-lived. On 25th January, Raila issued a statement rejecting a claim by Human Rights Watch, an NGO, that ODM leaders were orchestrating violence. He denied that a power sharing deal was on the cards. The only option open to ODM, he said, was a Kibaki resignation and a fresh election. Meanwhile, the ODM strongholds were seething in rage because Kibaki had declared at a meeting with Annan that he was the duly elected President.

As Annan shuttled between the two camps, violence began again, on a huge scale especially in Nakuru town and its environs with ODM supporters attacking the Kikuyu. The Kikuyu retaliated by attacking the Kalenjin and Luo. People began to leave Nakuru in droves creating a steady stream of Internally Displaced Persons (IDPs). Three days later, Nakuru had 60 people officially reported dead. The violence spread to Naivasha where some Kikuyu began to attack the Luo. Kofi Annan asked PNU and ODM to give him names of negotiators by 29th January. Twenty-eighth January saw 64 reported deaths in Kisumu and 22 in Naivasha. On January 28 nineteen members of one Luo family were reportedly torched to death in Nakuru.

Early in the morning of 29th January, blood-curdling screams woke me. A new ODM MP for Embakasi Constituency, Mugabe Were, who lived in my neighbourhood of Woodley Estate, had been shot dead, sparking another bout of street protests. It was not immediately clear whether his death was caused by violence as part of the on-going political acrimony or criminality. Twig-waving mourners thronged the estate. More cases of violence were being reported in the Rift Valley and roads were clogged with humanity, running towards churches

and police stations. The violence had taken a life of its own and the politicians had no control over it anymore.

The situation was getting hopeless. Nobody was spared. Religious organisations that could help to mediate had taken sides. I attended some of the prayers in Kinangop and in Nairobi. In all the places I went to, the Priests had taken sides, and they ranted in their preaching about ‘the other’ community. Some were subtle, but the message was unmistakable. The clerics were routing for their ethnic communities, even in the cosmopolitan Nairobi. I became one of the many people who stopped attending church services.

At home, I watched Annan address the National Assembly and strongly call for an end to the chaos. In his speech I felt fury, and the politicians felt it too. The talks began the following day. ODM had Musalia Mudavadi, James Orendo, Dr Sally Kosgei, and William Ruto. PNU had Martha Karua, Prof Sam Ongeru, Moses Wetangula and Mutula Kilonzo.

Annan, Machel and Mkapa framed the dispute in two levels – those that require immediate solution and others that required long-term solutions. The short-term issues would be dealt with in four weeks, but long-term grievances would be addressed in one year. The talks began at the Serena hotel in a room that Kenyans christened the “Amani” room. *Amani* is Kiswahili for peace.

I was at work on 31st January, when a colleague burst into our open plan office dramatically to announce that another ODM MP, David Kimutai Too, representing Ainamoi Constituency had been shot dead in Eldoret. We grabbed our belongings from the office and rushed home to avoid the inevitable protests that we knew would follow. The police later said that the killing was related to a love triangle. He had been shot by a police officer, who had also shot a female police officer found with the MP, apparently, a consort. But ODM declared that it was an assassination, a bid by PNU to reduce the number of ODM MPs. The country began to burn again as violence broke out once more.

Annan called off the talks for the day.

Progress

On 1st February 2008, UN Secretary General Ban Ki-Moon arrived in Kenya to support Annan. We got a full brief of what to expect. There were some tangible gains. Annan said that the negotiating team had agreed on an agenda that included short and long-term goals.⁶¹ There were four items on the agenda, namely, ending the violence, solving the humanitarian situation, resolving the political crisis and addressing historical injustices that included land disputes. The first three agendas would be resolved within seven to 15 days. It did not make any difference to the perpetrators and victims of the violence that the negotiators signed on to an agreement on security measures.⁶²

There had been huge expectations that Annan would come in with strong arm-twisting tactics, call Kibaki and Raila and tell them to style up or ship out. Many Kenyans wanted the two to be asked, without any diplomacy, to direct that the violence stop immediately. When Annan began speaking diplomatically of an agenda and a time frame, perpetrators realised they had time to get away with some more atrocities as the rest of the country cowered. Nobody was then surprised when the violence continued with at least 20 people reported killed on 2nd February. On 3rd February, Raila called for AU peacekeepers to be sent to Kenya. This was chilling because it was interpreted as a confirmation that the mobs were now out of control.

Kofi Annan identified Cyril Ramaphosa, a South African politician, businessman and trade union leader as chief mediator to lead the long-term talks. As soon as Ramaphosa arrived at the Serena, the PNU team raised concerns that, he was Raila's business partner. Ramaphosa had to go back to South Africa. On 4th February, Raila threatened to withdraw from the talks if a deal was not reached and said that PNU kept moving the goal posts. He set new conditions; a new presidential election in three months, a new electoral commission and the same voter register. However, he said he was open to the alternative possibility of a transitional coalition government with a newly-created position for him as Prime Minister. On the same day of 4th February, the Annan-led negotiation team reached agreement on how to end the humanitarian crisis.⁶³

They also agreed on the establishment of a commission to investigate the post-election violence⁶⁴ and a constitutional review process,⁶⁵ as well as a truth, justice and reconciliation process. These were to be created through Parliament. Ambassador Oluyemi Adeneji, a Nigerian career diplomat and Politian, who was deputising Annan, chaired the sessions.⁶⁶

When Mutula Kilonzo representing PNU said that the two teams had agreed on the process of reviewing of and writing a new Constitution, it was good news for Kenyans. The previous Narc administration led by Kibaki had failed to deliver that and since, it became a key campaign promise by both PNU and ODM in the 2007 elections. On the same day, the team signed on to the establishment of an Independent Review Committee to investigate the 2007 presidential election and make findings and recommendations to improve the electoral process.⁶⁷

On 5th February, Prof Nyong'o threatened that ODM would go back to the streets if the government tried to legitimise itself by hosting a meeting of foreign ministers from the countries of the East African Inter-Governmental Authority on Development (IGAD). Annan criticised the threat; the meeting was held but not under the aegis of IGAD. On 6th February, Prof Nyong'o called off the rallies. In the meantime, the policeman who had been captured on TV shooting dead a Luo protestor in Kisumu was identified as Edward Kirui, a Kalenjin, which in the grotesque way of wars was an anti-climax as the Kalenjin and Luo were on one side. If the policeman had been identified as a Kikuyu, Kamba, Meru or Kisii, the backlash would have been grave.

On 8th February, Annan said that PNU and ODM had agreed to a political settlement and that there was hope of concluding the third agenda – resolving the political crisis. ODM's William Ruto watered down this statement saying that there was progress, but a national unity government had not been agreed on. Mutula Kilonzo, speaking for PNU was quick to respond, reporting that there was excellent progress. The Minister for Internal Security, Prof George Saitoti, seemed to reinforce the PNU view that there had been progress, when he lifted the ban on political rallies.

But on 9th February, Raila re-ignited the fires when he demanded that Kibaki should resign, or, a new election should be held. Raila said that

he was not willing to compromise on this demand. The country went through two tension filled days before 12th February, when Annan said that both sides had agreed on an independent review committee that would be mandated to investigate all aspects of the 2007 presidential election. He urged both sides of the house to speak to each other. Meanwhile, Annan moved the talks to a secret location, away from the Serena hotel in Nairobi. However, it was soon discovered that they had relocated to Kilaguni Lodge in the Tsavo National Park. It was impossible to hide such a big team.

William Ruto of ODM said that ODM had proposed a government in which the two sides would share power for two years before the next election. Annan reportedly confirmed that the two sides had agreed to a two-year power sharing transitional government. The Minister for Justice, National Cohesion and Constitutional Affairs Martha Karua, publicly objected to what was attributed to Annan, saying that power sharing for two years was a suggestion that misrepresented and undermined the government's position. Her position prevailed and on 13th February, the mediators said in a statement that Annan had only expressed his own perspective, and had in no way meant to indicate that the two sides had formally agreed on the proposal. On 14th February, the negotiating team signed on to another agreement, the one on resolving the political crisis.⁶⁸

On 15th February, Annan delivered more good news; PNU and ODM had agreed on the reforms of electoral and human rights laws. Annan also reassured the country that he would not leave Kenya until a new government was in place. He still had not managed to broker a power-sharing deal. It was an open secret that PNU wanted the President to retain executive powers while ODM wanted an executive Prime Minister. Annan also promised that a commission would be put in place by 15th March to review the 2007 presidential election. This commission would be expected to hand in a report in three to six months.

On 18th February, US Secretary of State Condoleezza Rice arrived in the country. The Minister for Foreign Affairs, Moses Wetangula, downplayed her visit, saying that Kenyans would solve Kenyan problems. Rice met the President, Raila and Annan. She then issued

a crisp statement in which she said that the settlement was taking too long. She said, in an ironic understatement that the USA was not trying to dictate a solution to Kenyans. Condoleezza Rice does not hide her condescension for the quarrelling leaders, or the Kenyan experience, in her writing. “The President and his aides were gathered in his very hot second-floor offices, she writes. I guess the air conditioning isn’t working today. I thought. *Or maybe Africans just like it hot.* Or maybe they’re trying to make me uncomfortable.” (emphasis by Rice). Condoleezza offers an important glimpse behind the scenes of the peace talks: “In a stroke of good luck, one of the individuals in the room was Kibaki’s coalition partner Uhuru Kenyatta, whose sister had gone to Stanford with Jendayi, the assistant secretary for Africa. I asked Jendayi to call Kenyatta aside and see if he could establish a real bottom line. They agreed to continue their talks after the formal meeting broke up.”

She then went to see Raila Odinga and his advisors at their party headquarters in Orange House. “Then I looked across the table at one of my former Stanford students, Sally Kosgei. Ironically here, in the middle of this conflict, were two individuals with Stanford ties, each on a different side. But they knew each other, and they knew Jendayi.”

The connections were important; Condoleezza writes that they proved “to be useful back channels.”⁶⁹

The following day, 19th February, Kibaki said that he was willing to share power within the context of the current Constitution in which the President had executive powers. Prof Nyong’o was quick to call for Parliament to be convened within a week to enact changes to the Constitution to implement mediation proposals for an executive prime minister. He said if this did not happen ODM would resume street protests.

There was an uneasy silence on the matter, broken on 21st February, when Mutula Kilonzo said that PNU had accepted the creation of the post of a non-executive Prime Minister with substantial responsibilities, although ODM wanted a Prime Minister with executive powers. Prof Nyong’o promptly responded that an agreement favouring the ODM position would be reached by the following day. The country was exhausted again and the gains Annan, Graca and Mkapa had made

seemed insignificant compared to this matter of power-sharing that was turning out to be the mother of all quarrels.

The region was tired too and the East African Community (EAC) Secretary General Juma Mwapachu said so, emphasising that the regional economies of Tanzania, Uganda, Rwanda and Burundi could no longer hold with the Kenyan conflict continuing. The newly-elected Chairman of the Commission of the African Union Jean Ping supported Mwapachu's statement when he said that Africa hoped a settlement could be reached within the week.

On 25th February 2008, the process ground to a halt.

PNU and ODM agreed to the creation of the post of Prime Minister but disagreed on the powers. They also disagreed on the action to take in case the coalition split and over who should take which government posts as Kibaki had already appointed ministers from PNU.

On 26th February, Annan suspended the talks even as he reassured the country that the talks had not broken down and urged Kenyans not to worry. A number of us went to the Serena Hotel and talked to some of the negotiators from PNU and ODM who confirmed that Annan was being diplomatic. The talks had indeed broken down. Annan then said he now needed to engage directly with the top leadership. Both Mutula Kilonzo representing PNU and Musalia Mudavadi of ODM complained publicly of frustration at the exercise. Mutula said that media reports of concluded deals had put extreme pressure on the negotiators. ODM called for street protests to be held on 28th February.

On 27th February, Jakaya Kikwete, President of Tanzania and new Chairman of the African Union, (after Kufuor's term as Chairman ended) arrived in the country. He was just in time to explain to Kibaki and Raila how his country worked with both the office of a President and Prime Minister.

Meanwhile, the Kenyan middle and upper classes had become very agitated as the war was clearly becoming a class war and no longer an ethnic war. In my house in Woodley Estate, we were now frequently taunted by youths from the neighbouring informal settlement of Kibera with shouts in sheng, a street language, of "*nyinyi wabaabi, tutawakujia*" "you rich people, we shall come for you". Raila and Kibaki were under considerable pressure too. Raila called off the street protests and pledged commitment to the talks.

On 28th February 2008, Kofi Annan gave Kenyans the final good news they had been waiting for: he had struck a deal between the two protagonists; Mwai Kibaki and Raila Odinga. The cycle of economic, ethnic and political grievances that had fuelled the PEV had been addressed in the mediations between Odinga and Kibaki in a peace accord, which brought a measure of stability to the country by calling for Odinga to join the government as Prime Minister of Kenya, while Kibaki remained President. The two protagonists, Raila and Kibaki had finally agreed to a coalition government. Annan summed it up in his now famous words “we have a deal”. Raila and Kibaki finally signed the agreement to end the Kenyan crisis in a ceremony held on the steps of Harambee House.⁷⁰

Then Raila and Kibaki shook hands for the first time in public since the violent conflict started. This handshake, made the crowd that had gathered break out into applause; a strange sound in a country that had not heard people clap for two months. As they made their speeches, President Jakaya Kikwete of Tanzania stood beside them grinning broadly. Thereafter, the country broke into celebrations with many people sending SMS messages traditionally reserved for the New Year. It did feel like the beginning of a new year. Neighbours who had not spoken for months tentatively exchanged greetings.

The Agreement formed the basis of what was to be known as the Kenya National Accord and Reconciliation Act, Annan said.⁷¹ The agreement spelt out that Kibaki and Raila had agreed to form a Grand Coalition Government. The Act required that the Prime Minister be an elected Member of Parliament and the leader of the largest party or coalition in parliament and that each party in the coalition government has one Deputy Prime Minister to be filled from among its elected members.

The cabinet, according to the Act was to be composed of the President, Vice President, Prime Minister, the two Deputy Prime Ministers and other ministers. As a safeguard, the removal of any cabinet minister could only happen after *consultation between and with concurrence in writing by*, coalition party leaders, while the Prime Minister or Deputy Prime Ministers could only be removed by *a majority vote of no confidence in Parliament*. The composition of the coalition government was also

expected to reflect a *portfolio balance* and the relative parliamentary strength of coalition parties.

The Prime Minister's key role was to *coordinate and supervise* government affairs. This role, as expected from the disagreements between the two sides in the negotiations, would in the next four years become the most contentious clause that haunted the coalition government, as it was not clear whether the Prime Minister would report to the President. The Prime Minister would have to be the parliamentary leader of the party or coalition holding a majority of seats in the national assembly, which Raila already did.

The agreement provided for two Deputy Prime Ministers, one for each of the parties with the allotment of cabinet seats to reflect on the relative strength of the parties. The national assembly was reconvened after the signing of the agreement to make the Constitutional changes needed in order to implement the agreement. Later, Musalia Mudavadi of ODM and Uhuru Kenyatta of KANU/PNU were both nominated by their parties for appointment as Deputy Prime Ministers. The President had already appointed Kalonzo Musyoka Vice President.

Ethnic rivalry, however, began to emerge. Tom Mshindi, an editor at *Daily Nation*, argued that "ODM had a chance to re-engineer the popular notion of tribal coalition and evolve as a powerful and permanent political vehicle." But first, he said, "it must jettison this silly talk of some tribes sacrificing more than others." He was making reference to a call by Kalenjin members of Parliament that William Ruto deserved the Number 2 position because "the Kalenjin community had sacrificed a lot for ODM and hence deserved a higher perch on the hierarchy than the Luhya community."⁷²

Kofi Annan left Kenya on 2nd March 2008, appointing Oluyemi Adeneji a former to hold brief for him. Adeneji's brief was tough; he was expected to lead talks on the long-term issues such as land disputes and the uneven distribution of resources among ethnic groups. The country was now completely without violence.⁷³

Annan departure duels

Eleven days of peace later, Kenyans were shocked by reports of 13 people killed in an attack near Mount Elgon. The Police said that

the killers were from the self-declared Sabaot Land Defence Forces (SLDF) consisting of members of the Sabaot community who had been fighting over the long-term issues that were yet to be addressed such as access to land. The country was however, buoyed by reports of a meeting between Kibaki and Raila on 4th March, particularly as Raila praised the meeting in public. Kibaki in turn spoke to Parliament on 6th March, urging for quick passing of legislation that was required to actualise the power sharing agreement.

After the signing of the Agreements, there had been four Bills which required passing, and an amendment to the Constitution. The National Accord and Legislation Bill, the predecessor of the National Accord and Reconciliation Act 2008 to entrench the Grand Coalition Government in the Constitution, and the Constitution of Kenya (Amendment) Bill 2008 which required the enactment of a new Constitution, considering that Kenya had struggled for many years to repeal the independence constitution, without success.

Agenda 4 of the KNDR process required that the State accelerate the process of constitutional reform. This required two more Bills, the Truth, Justice and Reconciliation Bill and the Ethnic and Race Relations Bill that would later be changed to the National Cohesion and Integration Commission Bill, creating the Commission that I was to work in as a Commissioner.

* * *

The Kenya Defence Forces (KDF) was deployed to Mount Elgon in March 2008; a huge military offensive that included ground and air attacks against SLDF.

* * *

Meanwhile on the national front, the Head of the civil Service, Francis Muthaura, stirred the hornet's nest when he said that Kibaki would remain both head of state and head of government. Next to the President in rank, he said, was Vice President Kalonzo Musyoka. Raila Odinga as Prime Minister would rank third. The two lawyers on the PNU negotiating team, Mutula Kilonzo and Moses Wetangula, supported this statement. William Ruto rose to Raila's defence saying that Muthaura's statement was contentious.

On 18th March 2008, Parliament passed the Constitution of Kenya (amendment) Bill unanimously, establishing the posts of Prime Minister and Deputy Prime Ministers. The President signed the Bills into law a few hours later. A law providing for the newly created posts and detailing the terms of the power sharing agreement was also created. After signing the laws, the President called for the drafting of a new Constitution. The Prime Minister voiced sentiments that the country needed a *national ethnic conference* in which the representatives of the 42 ethnic communities in the country would come together to discuss how the country could be led.

Right from the swearing in ceremony on 15th January 2008, ODM MPs had sought to assert themselves by questioning the legitimacy of the executive, considering that the election results had been contested violently. As Kibaki watched from his seat, Ababu Namwamba, MP for Budalangi, had refused to be sworn in unless under the “name of his President, Raila Odinga”.

Meanwhile, discussions began on the composition of the new cabinet and ODM proposed a Cabinet with 34 members. This was twice the number of the partial Cabinet that had been appointed by President Kibaki in January. The PNU side proposed a Cabinet of 44 members. The politicians had conveniently ganged up together to create unnecessary ministries to accommodate all the key leaders desperate to get posts and represent “their ethnic communities”.

Civil society organisations opposed this and organised street protests, arguing that the country could not afford a bloated Cabinet. Instead, they wanted a Cabinet with 24 ministers. The police dispersed the protesting civil society members with teargas.

Annan sent a statement on 2nd April 2008, expressing concerns about the inordinate length of time it was taking to name a new Cabinet. His statement stressed the need for Raila and Kibaki to put Kenya first and name a Cabinet that included everyone on both sides of the coalition equally.

Finally on 3rd April 2008, the two sides agreed to the size of the cabinet. The President issued a statement saying that they had agreed on a Cabinet of 40, the largest in Kenya’s history. The reasoning was that the size of the Cabinet had to be doubled to ensure inclusion so that there would be goodwill for the agreement to hold successfully.

Forty Cabinet ministers was bad enough but the real meat in the gravy was in the Assistant Ministers, two of whom were assigned to each ministry. This cabinet was going to cost Kenya, as Kenya's Ministers and Members of Parliament are among the highest paid in the world.

I wrote an opinion piece (Annex 1) putting into words what I hoped the new coalition Government would set out to do, titled "*Peeling the Kenyan Conflict Onion: Needs not positions; development, security and human rights our priorities in post-conflict reconstruction.*" *Pambazuka* press published it on 15th April 2008.

Kenyans were not to be spared another fight between PNU and ODM on the cabinet positions. ODM announced that there was still disagreement on the allotment of the ministerial portfolios. The Government spokesman Dr Alfred Mutua said that the delay was ODM's fault and that the President had invited the Prime Minister to discuss the matter. After the Principals met, they said that they had made substantial progress and would reach an agreement on the following day.

A day later, the discussions were suspended, as they could not agree. Prof Nyong'o of ODM informed the country that PNU had not recognised the 50/50 power sharing agreement. The Prime Minister, Raila Odinga emphasised this point when he said that he had received a letter from PNU that said that the Constitution granted the President exclusive executive powers to run the country on his own and that the President's powers superseded that of the Accord. Residents of Kibera, the constituency represented by the Prime Minister hit the road in a huge protest that the Police promptly broke up with tear gas.

Finally, on 13th April 2008, the President and Prime Minister announced a Cabinet of 44 Ministers. Raila Odinga was officially named Prime Minister. KANU's Uhuru Kenyatta was named by PNU as Deputy Prime Minister and Minister for Trade while ODM's Musalia Mudavadi was named as Deputy Prime Minister and Minister for Local Government.

* * *

On 23rd May 2008, the negotiators signed onto an implementation matrix for operation of the Kofi Annan agreements.⁷⁴ Kenya's political parties can be full of contradictions. In 2005, Uhuru Kenyatta and

Raila Odinga were on the same side, campaigning against a Mwai Kibaki government-led referendum on the Constitution. In 2007, Raila Odinga, William Ruto and Musalia Mudavadi were in the same party running against Uhuru Kenyatta and Mwai Kibaki. The same year, Raila Odinga and Kalonzo Musyoka teamed up but later fell out before the 2007 elections. Kalonzo Musyoka ran on his own as an ODM-Kenya candidate and after elections, joined Mwai Kibaki as Vice President.

In the 2013 elections, bitter rivals Uhuru Kenyatta and William Ruto would ran on a joint ticket competing with another set of former bitter rivals, Raila Odinga and Kalonzo Musyoka. Musalia Mudavadi had left Raila's side, joined Uhuru's side briefly but ended up running on his own as a United Democratic Front (UDF) candidate. In 2017, Uhuru Kenyatta and William Ruto would ran on a joint ticket again against Raila Odinga and Kalonzo Musyoka who had now been joined by Musalia Mudavadi. The ethnic communities they represented followed them into their new alliances, united in the vote, forgetting memories of previously inflicted grievous harm against each other.

The agreements structured under the KNDR were a forced marriage that attempted to ensure that the Executive and the National Assembly became instruments of reform. The fundamental basis for the establishment of a coalition government was to create checks and balances in the executive and parliament and ensure that no individual or group would dominate the management of the state.

The new cabinet was sworn in on 17th April 2008. Kofi Annan came back to Kenya to witness the occasion. In his speech, he appealed to Kenyans to support both sides of the Cabinet. The wrangling over the Cabinet positions as IDPs languished in camps left an extremely bitter taste in the mouths of many Kenyans. The politicians had united to fight for power and political positions, yet they had not shown any resolve to unite and bring back a peaceful Kenya. The bitterness among Kenyans would be short-lived. Soon, many of them would coalesce again as ethnic communities in support of their political leaders.

Chapter 6

Reforming Institutions: Agenda 4 Commissions

We learnt the hard way what other countries should never experience: When a country allows itself to fail, it has no friend. Second, the outcome of any conflict is never pre-determined from the outset.

**– President Paul Kagame of Rwanda, speaking to Kenyan
Parliamentarians in 2008**

During the PEV, the AU under the leadership of the then Ghanaian President John Kufuor had created the mandate for a mediation initiative to support Kenya. The United Nations (UN) provided essential political support and capacity building for the Kofi Annan led effort. The intervention was mainly informed by Kenya's place as an ally to the West as well as a regional business hub that linked, through the port of Mombasa, Uganda, Rwanda, Burundi and the DRC.

The then French Minister of Foreign and European Affairs, Bernard Kouchner appealed to the UN Security Council in January 2008 to react “in the name of the responsibility-to-protect” in shaping its responses to the on-going crisis on Kenya. The UN Secretary General, Ban Ki-Moon, decided, following consideration by the Policy Committee that the world body's first goal in Kenya should be to prevent the further commission or incitement of “responsibility-to-protect” crimes and violations. When the Kofi Annan team successfully managed to broker peace, the rapid and coordinated reaction by the international community was highly recommended as a “model of diplomatic action under the ‘responsibility to protect’.”

Surprisingly, the post-election violence happened only along the Kenya of the railway line. A resident of the North, Dominic Pkalya,

gave an analysis for the non-involvement of the marginalised and of especially northern Kenya in the 2007-08 PEV.

“Several reasons have been adduced as to why northern Kenya was not sucked into the turmoil. First, the crisis was not entirely or genuinely about the election result. But this is not to infer that the region overwhelmingly voted for Mr Kibaki or ODM’s Mr Raila Odinga. To be fair, the region voted for both in almost equal measure. (...)

But the North is largely arid, and a low potential and less attractive swathe of land, in a country whose economy depends on mainly rain-fed crop farming.

The North’s barrenness never attracted a sizeable population from other parts of the country, and there was really nobody to chase in order to grab their land. The crisis was hinged on the erroneous belief that the “immigrant” communities took most of the economic opportunities and jobs that should have been reserved for the “natives”. This was the hype in Coast, Rift Valley, Western and Nyanza Provinces, areas worst hit by the skirmishes and rooting for the *majimbo* form of governance. (...)

Previous experiences with post-colonial governments informed the residents of northern Kenya that there was really nothing to expect from the government, especially when your numbers are insignificant in a *winner-take-all* form of governance.”⁷⁵

The KNDR process identified critical long-term issues that formed the long term Agenda 4 items, namely; land reform, tackling poverty, inequality, regional imbalance and creation of employment, covering the whole of Kenya.

These long-term issues would be addressed through the formation of what would be referred to as the Agenda 4 Commissions, consisting of some of Kenya’s and the world’s finest minds. The eight Commissions were as follows: The Independent Review Commission (IREC), The Commission of Inquiry into Post-Election Violence (CIPEV), A Committee of Experts on Constitutional Review (CoE), The Interim Independent Electoral Commission (IIEC), The Truth, Justice and Reconciliation Commission (TJRC), The Interim Independent Boundaries Review Commission (IIBRC), The Interim Independent

Constitutional Dispute Resolution Court (ICDRC) and The National Cohesion and Integration Commission (NCIC)

1. The Independent Review Commission (IREC)⁷⁶

Justice Johann Christiaan Kriegler, a South African Judge, led IREC. The other Commissioners were Lady Justice Imani Daud About of Tanzania as the Vice Chairperson, Horacio Boneo from Argentina, Francis Ang'ila Aywa, Lucy Kambuni, Catherine Mumma and Prof Marangu M'Marete, all Kenyan. Mr Joergen Elklit, a Danish political scientist was the Commission Secretary. IREC was tasked with inquiring into all aspects of the 2007 elections including vote counting and tallying at all levels of the general elections with particular emphasis on the presidential elections. They were also tasked to analyse the constitutional and legal framework including inconsistencies with the electoral laws as well as examine the organisational structure, composition and management of the ECK.

On 17th September 2008, the Chair of IREC, Justice Kriegler handed in a report to President Mwai Kibaki and the Prime Minister Raila Odinga. The report recommended that the ECK under the Chairmanship of Samuel Kivuitu should be disbanded and a new one constituted. Justice Kriegler also handed over the report to Kofi Annan on 18th September 2008, on the same day that Internal Security Permanent Secretary (PS) Francis Kimemia said that 80,000 people were still stuck in camps for the internally displaced with Nakuru, Naivasha and Eldoret camps still having the highest number.⁷⁷

The closure of the camp was indefinitely shelved. Meanwhile four people had been arrested and charged with murdering seven people at the Kiambaa church where a number of Kikuyu, including women and children had been burned to death.⁷⁸

IREC had spent six months going around the country listening to people's views on the conduct of the election but their report said it was not possible to know who won the controversial 27th December presidential election. The report said in part:

"The conduct of elections was so materially defective that it is impossible to establish true or reliable results for the presidential and parliamentary elections ----- Although there is room for honest disagreement as to whether

*there was rigging of the presidential results, the answer is irrelevant as the recorded and reported results are so inaccurate as to render any reasonably accurate, reliable and convincing conclusion impossible -----
--- a potential recount of the presidential vote tally, as had been advocated by ODM, could not have altered the election outcome since "there was widespread bribery, ballot rigging and intimidation. The process was so impaired that the results were irredeemably polluted. Nobody will never ever know who won the elections, it was simply too bad even before the results got to KICC."*⁷⁹

This set a new low for Kenya. Everyone stole votes, was the verdict, even as both the President and Prime Minister welcomed the findings and promised to have the recommendations implemented. Even then, Kenyans still expressed several opinions wishing that Kriegler had named the winner. Justice Kriegler retorted that naming the winner had not been part of his brief and that in the 2007 poll, "ballot boxes were stuffed all over the country, there was vote buying, bribery, intimidation and women were not allowed to stand for certain offices". Mshindi, writing in the *Daily Nation* said;

*"By a fortuitous twist of fate, the Kriegler Commission rules it is impossible to tell who the real winner of last years disputed election is in Kenya. This is a good thing as it is not in this country's interest now to know who the winner or loser was, as this will only re-open wounds still festering just below the surface of the uneasy calm (...) The Commissioners are aware that the partners in the Grand Coalition are still quarrelling over whether youths arrested as a result of the mayhem should be released or not, and that the coalition itself is far from a happy family in which everyone is reasonably content."*⁸⁰

At his final press conference on 19th September 2008, Justice Kriegler uttered words that would be repeated by Kenyans over and over again in the lead up to the next elections. *"Kenya must adopt the recommendations of the IREC report for reforming the election system or perish come the 2012 poll. The events of January 2008 could look like a Christmas party come 2012"*. These were words that even Samuel Kivuitu, the ECK chair whose sacking IREC had recommended, supported. *"It is upon all Kenyans to look for a better system.....if we don't rectify this time, it will be the same in the next elections and we will be looking for Kreigler again"* he said.⁸¹ The US Ambassador to Kenya Michael Ranneberger was also quick to call for

the full implementation of the IREC report saying that *“his government was ready to finance the implementation of the commission’s recommendations if asked to do so”*.⁸² Kofi Annan endorsed the recommendations of the Kriegler Commission and urged the government to implement them saying *“the report must not be brushed aside or left to gather dust in shelves...the recommendations are far too important”*.⁸³

2. The Commission of Inquiry on Post-Election Violence (CIPEV)

The Chair of CIPEV was Justice Phillip Waki, a Kenyan judge. There were two other Commissioners, Pascal Kambale, from the Democratic Republic of Congo (DRC) and Gavin McFayden, from New Zealand. The Secretary to CIPEV was the executive director of the International Commission of Jurists (ICJ), George Kegoro a Kenyan.

CIPEV was to investigate the facts and surrounding circumstances related to acts of violence that followed the 2007 Presidential Elections and the actions or omissions of State security agencies during the course of the violence. They were further tasked to recommend measures to be taken to prevent, control or eradicate the occurrences of similar deed in future; bringing to justice those persons responsible for criminal acts; eradicate impunity and promote national reconciliation in Kenya as well as such other legal, political or administrative measures as the commission may deem necessary.

CIPEV was also required to make recommendations to the TJRC. They had three months to carry out these tasks; it took them four months. CIPEV held live enquiries enabling the country to walk again through the circumstances of what led to the violence and the violence itself. Kenyans from all walks of life, from all parts of the country participated. I had watched the South African Truth and Reconciliation Commissions on television, and what the Waki Commission was doing was remarkably similar. In one of its memorable hearings the country was treated to a series of accusations traded by PNU and ODM, blaming each other for the violence.

ODM Secretary General Professor Anyang’ Nyong’o told the Commission that the government was responsible for the chaos; *“The*

Police, the Administration police and the General Service Unit reacted violently to the rejection of the results announced by the Electoral Commission of Kenya (ECK) and in perceived strongholds, and they used live bullets to disperse angry demonstrators, resulting in deaths and injuries.”

PNU spokesman George Nyamweya said; “ODM had already proclaimed in public that it would not accept anything short of an ODM win. In the Rift Valley, some ODM leaders called for the removal of people they referred to as *madoado* (stains, outsiders) who were perceived to be against Mr Odinga in the presidential race.....they were also advocating the introduction of *majimboism* in their campaigns which was perceived by some people to mean the forceful eviction of ethnic communities who had settled in ODM strongholds.”⁸⁴

On arrest of perpetrators, the then AG Amos Wako told the Commission,

*“I wish I had more power not only to control, but also to direct the investigations. The will to prosecute existed, he said, but investigations, especially those related to post election violence, faced many challenges. Investigators had difficulties tracing witnesses because of displacement (...) some were unwilling to come forward for fear of reprisals. Parliament had earlier thrown out laws intended to curb the kind of violence witnessed. The National Security Intelligence Services had advised that laws relating to hate speech be strengthened, but after the Attorney General’s office had prepared the amendments, they were shot down in Parliament. (...) Mr Kivuitu said that parliament had failed to make the necessary amendments to the law to empower the ECK, which had thus not been able to deal with errant politicians and political parties.”*⁸⁵

On 15th October 2008, CIPEV⁸⁶ handed over to President Mwai Kibaki and Prime Minister Raila Odinga a report that detailed causes of the violence. The list of alleged perpetrators was however handed over to Kofi Annan directly. The report gave Kofi Annan latitude to give the Kenyan Parliament time to set up a local tribunal with the mandate to deal with crimes committed during the post-election violence or take the case to the International Criminal Court (ICC). On 24th December of the previous year, 2008, President Kibaki had signed the International Crimes Bill. With this action, he domesticated the International Criminal Courts. The Waki report and its recommendations, laid the ground for what turned out to be the well-documented Kenya’s and

later Africa's, confrontation with the ICC.

CIPEV gave the country the historical context of the violence, a narration of the violence in all the provinces as had happened. The report also highlighted four crucial areas, sexual violence, internally displaced persons, the media and the nature and impact of the violence. Security agencies and their shortcomings were dealt with separately. CIPEV concluded that in some geographic areas, the post-election violence was spontaneous while in other areas, it was planned, with some areas suffering a combination of both.

On ethnic attacks, CIPEV said;

*The report concludes that the post-election violence was more than a mere juxtaposition of citizens-to-citizens opportunistic assaults. These were systematic attacks on Kenyans based on their **ethnicity** and their political leanings. Attackers **organised along ethnic lines**, assembled considerable logistical means and travelled long distances to burn houses, maim, kill and sexually assault their occupants because these were of **particular ethnic groups** and political persuasion. Guilty by association was the guiding force behind deadly "revenge" attacks, with victims being identified not for what they did but for their **ethnic association to other perpetrators**. This free-for-all was made possible by the lawlessness stemming from an apparent collapse of state institutions and security forces."*

CIPEV accused the police of being overwhelmed by the "sheer number of attackers and the massive numbers and the relatively effective coordination of the attacks." The Kenya Police, CIPEV also said had failed to act on intelligence and other early warning signs and were uncoordinated.

CIPEV made far reaching recommendations with an interesting caveat; that they should be implemented under the auspices of the Panel of Eminent African Personalities acting in consultation with the President and the Prime Minister of Kenya, with the full co-operation of Parliament, the Judiciary and the office of the AG. They included, a Special Tribunal, to be set up as a court that would sit within the territorial boundaries of the Republic of Kenya and seek accountability against persons bearing the greatest responsibility for crimes. CIPEV also recommended for the fast tracking of the International Crimes Bill, utilisation of the Witness Protection Act 2008, enactment of the

Freedom of Information Bill and the suspension of all persons holding public office and public servants charged with criminal offences related to post-election violence.

Even as the CIPEV was working on its investigations, an interesting conversation had begun, based on the Mau forest, Kenya's largest water catchment area. This conversation would have been ordinary were it not for the fact that it was indicative of cracks beginning to emerge within ODM. Raila Odinga had said that those who had encroached on the Mau forest needed to be evicted to save Kenya's biggest water tower from drying up and affecting food security. William Ruto, one of his chief negotiators and Raila's key ally in ODM had opposed the eviction. It was not lost to those observing the conversation that the inhabitants of the Mau forest were Kalenjin, William Ruto's ethnic group, majority of who had voted for Raila Odinga.⁸⁷ Rift Valley Kalenjin MPs finally put an end to the rumours circulating that they were unhappy and told Raila that they were planning to exit from ODM as he had used and turned against the Kalenjin people in the Mau forest.⁸⁸ The Mau forest conversation pitting the Kalenjin against Raila would be the second public indication of a fall out within ODM, the first being in the non-appointment of a Kalenjin as Deputy Prime Minister.

It was in the background of the Mau quarrel that CIPEV handed over its report to the President and Prime Minister. In a strongly worded statement, ODM MPs said that "ODM has resolved to reject the report in toto" arguing that the Waki report contained fundamental flaws, accusing the Commission of overstepping its mandate by naming the suspects even as the US and German Ambassadors to Kenya Michael Ranneberger and Walter Lindner demanded that the Waki report be implemented in full, challenging its critics to declare their fears.

ODM MPs said they had considered the advice of a team of law experts, which found inherently incurable errors and fundamental constitutional contradictions in most sections of the Waki report. ODM said that it would shield any of its members whose names may be in the secret list because Kenya's institutions had not collapsed to warrant such a trial and that they would resist and stop any rendition or surrender of Kenya's citizens to a tribunal outside its territory".⁸⁹

PNU MPs in turn held meetings and demanded the list of perpetrators, which Justice Waki had given to Kofi Annan for parliament to debate. They were however opposed by Cabinet ministers Martha Karua and Mutula Kilonzo. Minister Kilonzo argued that those lobbying to throw out the Waki report were engaging in an exercise in futility and exposing suspects in the secret list to the ICC. The report was tabled in Cabinet for discussion.⁹⁰

The Nation newspaper in a strongly worded editorial had this to say on the Waki report,

“It is heartening to see that finally, a large number of PNU and ODM MPs are agreeing on something. They have spent so much time fighting nasty wars against each other and dividing the country that we should be delighted to see them coming together. That is the good news. The bad news is that we should be very afraid about the cause that is uniting them. These “honourable” ladies and gentlemen are uniting in, to use the words of the ODM Parliamentary Group, “total rejection” of the Waki Commission of Inquiry Report into Post Election Violence.”⁹¹

3. Committee of Experts on Constitutional Review (CoE)

Renowned Constitutional lawyer Nzamba Kitonga led the CoE. Human Rights lawyer Atsango Chesoni deputised him. Other Kenyan members were Ms Njoki Ndung’u, Mr Otiende Amollo, Mr Abdirashid Hussein and Mr Bobby Mkangi. There were three non-Kenyans in the commission, Prof Christina Murray (South Africa), Dr Chaloka Beyani (Zambia) and Mr Frederick Ssempebwa (Uganda). Kenya had been searching for a new Constitution for more than two decades and a lot had been done, including a draft alternative Constitution by civil society. Numerous court battles had been fought over the Constitution; several people had been jailed and others killed for their efforts in agitating for a new Constitution. The Constitution had also informed several debates in and out of Parliament.

The referendum campaigns on a new Constitution in 2005 had been littered with hate speech and ethnic slurs with ten people dying from campaign violence.⁹² With the process having failed in 2005, a fresh one was initiated in 2008 as part of the KNDR forum. President

Kibaki and Mr Odinga had agreed during the signing of the National Accord on 28th February 2008 on a framework for the proposed new Constitution.

The Constitution was key to ensuring national cohesion and integration and guarantee transformation of the electoral system. The CoE had been busy from inception. By the time I joined the NCIC in September 2009, I had already participated in a number of its programmes. In July 2009, for example, I had been part of a discussion in public forums on *contentious issues* that had previously not been agreed on in past draft constitutions. These issues were the Executive and Legislature, devolution of powers and bringing the Constitution into effect. Christians also brought others such as abortion and the Kadhis Courts. Collectively, these would dominate debate right up to the referendum on the Draft Constitution on 4th August 2010.

4. Interim Independent Electoral Commission (IIEC)

The IIEC replaced the disbanded Electoral Commission of Kenya, which had managed the botched elections of 2007. The process to identify a Chairperson for the IIEC was initially fraught with problems.⁹³ Parliament finally settled on Ahmed Issack Hassan as the chairperson to lead a team of eight commissioners, Tiyah Galgalo, Hamara Ibrahim Adan, Douglas Mwashigadi, Kenneth Nyaundi, Yusuf Nzibo, Winfred Guchu, Davis Chirchir and Abiud Wekesa. They were to be in office until a referendum on the Constitution was held. They were tasked to reform the country's election management systems and conduct following the untidy and chaotic 2007 experience. They were also to set up new ICT infrastructure. The IIEC was also to fight voter apathy after the recent violence and lobby and ensure that all voters registered afresh as the previous register was no longer in use. Their mandate would expire in mid-2011, after they had conducted a referendum on the constitution. They were, like John the Baptist, tasked to clear the way for the electoral team that would manage the next elections by ensuring that a reliable and transparent electoral system was in place.

The IIEC was mandated to manage by- elections, several of which, such as Bomachoge and Shinyalu constituencies were coming up. They

were also to develop a modern system for the collection, collation, tallying and transmission of electoral data, all of which were at the base of the dispute that erupted following the 2007 presidential election. The IIEC had also to do something most important for Kenya. The trust and confidence of Kenyans in the electoral system had been completely shattered. It was the IIEC's enormous task to restore it. IIEC promised to do so with its new chairman Ahmed Issack Hassan promising to borrow lessons from especially, Ghana. Ghana had just concluded a presidential election that was closer to call than Kenya's, yet the outcome announced by the electoral chairman Kwadwo Afari Gyan was accepted without violence.

5. The Truth, Justice and Reconciliation Commission (TJRC)

In 2003, a Kenyan Professor, Makau Mutua, had led a Government established Task Force to get views from Kenyans on whether they wanted a Truth and Reconciliation Commission, similar to the one that had been set up in South Africa in 1996. The then government, however, did not establish the TJRC.

The violence of 2007-08 forced the government to revisit the truth and reconciliation commission matter. The TJRC was established to provide an opportunity to investigate 'human rights abuses, historical injustices, illegal or irregular acquisition of land and the misuse of political power from independence in 1963 to the present'. The Chair of the TJRC was Ambassador Bethuel A. Kiplagat, a career diplomat. His Vice Chair was Betty Murungi. Other Members were Tecla Namachanja Wanjala, Ahmed Sheikh Farah, Margaret Shava and Tom Ojienda all from Kenya. The other Commissioners were Berhanu Dinka, Gertrude Chawatama and Professor Ronald Slye from, Ethiopia, Zambia and the US, respectively.

As the 2007-2008 PEV raged on, Ambassador Kiplagat, a soft-spoken gentleman, was a key feature on national television calling for calm. He had been one of the conveners of the *concerned citizens for peace*, together with Kenya's decorated Lt. Gen. Daniel Opande (Rtd.) supporting the Annan team with advice. Ambassador Kiplagat had previously, as chairman of the Africa Peer Review Mechanism

(APM) of the New Partnership for Africa's Development (NEPAD) coordinated a visit by Nelson Mandela to Kenya and indeed, actually, bore a striking resemblance to the great man. Seeing them together, one was immediately struck by the thought, were these brothers from different mothers?

The mandate of the TJRC in itself was very wide, as were Kenyan expectations that in two years, the Commission would have achieved the huge tasks of getting the truth and ensuring not just justice alone but reconciliation as well. Its mandate only went back to 1963, the year when Kenya attained independence to February 2008 when the post-election violence ended. Many wondered, how, for instance, land matters – many of which went back beyond independence – were to be resolved? The TJRC was expected to give past perpetrators and their victims a platform to tell the truth and hopefully reconcile. The TJRC was also to make decisions on reparations and amnesty. Between the date of inauguration on 3rd August 2009 of the TJRC and 3rd November 2011, the TJRC was expected to carry out investigations, hearings, research and documentation, make recommendations and prepare a public report to be presented to the President. By 3rd February 2012, Parliament was supposed to have discussed the TJRC report and set up the implementation framework.

The TJRC, as expected from a country like Kenya with such a divisive past, was controversial from the start to the end. Prior to its establishment, civil society and political parties, through Ikolomani MP Dr Bonny Khalwale tabled a petition seeking to stop the Truth, Justice and Reconciliation Bill from being passed until proposed amendments on blanket amnesty, reparations and gender issues had been effected. Parliament threw out the petition.⁹⁴ Barely a few weeks after the announcement on the final names of the TJRC commissioners, some civil society members rejected the appointment of Ambassador Bethuel Kiplagat as Chair. They cited his record serving under President Daniel arap Moi as ambassador and PS.⁹⁵ Some of the victims vowed that they would not appear before the commission.⁹⁶

It was to the TJRC's disadvantage that as it began its work, the political class was emotionally debating the post-election violence. Some politicians strongly advocated for the TJRC as an option to deal

with perpetrators of the post-election violence as a replacement for the ICC or a local tribunal. Others opposed the formation of the TJRC. Two politicians, Mr Njeru Kathangu and Koigi wa Wamwere, a former MP and 10 others, filed a case in court to stop the TJRC from doing its work. Their suit papers said that Ambassador Kiplagat's appointment negated the National Accord and the TJRC Act because he was serving for some of the period when the alleged injustices took place as a senior public official and hence he could not deliberate on the violations with impartiality.

The controversy over the TJRC sparked a heated debate. Kenyans contributed through media outlets such as letters to the editor and FM stations. On 25th July 2009, Ambassador Kiplagat burst into tears on national television station, NTV, when asked about past events. It was horrible to watch. Without doubting the validity of the concerns raised, the debates on the TJRC at this point were puzzling. One of the concerns raised was on the timing. The process of the appointment of TJRC Commissioners had been public and long drawn out. There had been several opportunities to raise concerns over the nominees.

6. Interim Independent Boundaries Review Commission (IIBRC)

Former assistant minister Andrew Ligale chaired the IIBRC; he was appointed on 12th May 2009. Other members of the commission were Jedidah Ntoyai, Irene Cherop Masit, Mwenda Makathimo, Joseph Kaguthi, Dr John Nkinyangi, Murshid Abdalla Mohammed, Abdullahi Sharawe and Rozah Akinyi Buyu. IIBRC was charged with the mandate to review the existing constituency boundaries. They were also expected to make recommendations for delimitations of constituencies and wards and recommend the optimal number of constituencies on the basis of equality of votes. They were, in doing so, to take into account density and population trends, means of communication, geographical features and community interest. Their task also included making recommendations on administrative boundaries, including the fixing, reviewing and variation of boundaries of districts and other units.

The IREC report had recommended an urgent review of electoral boundaries at least 18 months before the next General election as

Kenya's electoral map was so skewed that it did not make sense to the principle of one-man-one-vote. IREC provided that "Parliament can only contribute views to the commission but cannot over ride its recommendations."

Boundaries had been a source of conflict because the electoral system in Kenya was mainly based on constituencies whose boundaries reflected the boundaries of ethnic areas. The IIBRC chose the positive, adapting the motto, *Boundaries for National Cohesion*.

Boundaries had been seen as key to political, identity and ethnic survival. Prior to the formation of IIBRC, there had been a raging debate among the political class on boundaries. Some complained that over populated areas were under represented in Parliament. Under former President Moi, sparsely populated areas had been split into many constituencies. Populous regions that carried the ethnic communities that then opposed the former President Moi remained the same. Former President Moi propagated the narrative of big ethnic communities versus small ethnic communities, just like his party KADU had done in the lead up to independence. This way, the small ethnic communities, voted for him. The President was therefore able to win the 1992 and 1997 general elections by having more constituencies although the opposition zones had huge numbers of voters. It was a classic out of the ethnic divide and rulebook.

In the elections of 2007, most of the sparsely populated constituencies were represented by ODM. ODM therefore had more MPs in Parliament. PNU MPs argued that they had more voters leading to the quip by an ODM MP that "one kilometre was equal to one vote". A boundary review would hopefully cure these issues.

7. The Interim Independent Constitutional Dispute Resolution Court (IICDRC)

The IICDRC was established with an exclusive mandate to hear and determine all matters arising from the Constitutional review process for the period up to December 2010 or three months after the promulgation of the Constitution. The court proceedings were to be held in public at the Kenyatta International Conference Centre to ensure accessibility.

Lady Justice Violet Mavisi chaired the Court. Its members included Lady Justices Jamila Mohammed and Scholastica Omondi and Justices

Samuel Mukunya, Sankale Ole Kantai, Mburugu M'Kanata Kioga, all from Kenya. Other Judges were Michel Bastarache from Canada, Ms. Unity Dow of Botswana, and Mr John Alastair Cameron and Lord Abernethy, both from the United Kingdom. The court was to be different from the High Court with a new section, 60A, establishing the IICDRC inserted into the Constitution. One of their landmark rulings would be that prisoners and Kenyans in the diaspora could vote in the 2010 referendum on the Constitution.

8. The Kenya National Cohesion and Integration Commission (NCIC)

NCIC, the Commission I would serve in, was the only permanent Agenda 4 Commission created by the KNDR process. Its mandate was to focus on the longer-term consolidation of national cohesion and unity, respond to the post-election crisis, deal with and mediate ethnic and race related conflicts and promote peaceful and harmonious coexistence among Kenyans.⁹⁷

* * *



Cartoon depicting President Mwai Kibaki and Prime Minister Raila Odinga ordering for a meal with Kofi Annan. Kofi Annan places an order for the main course for all of them, Agenda 4.

Although the Accord developed a holistic change programme, it did not address the crucial element of disarming, demobilising and

reintegrating armed militias into society. Unemployed youth, economic marginalisation and historical injustices made a toxic combination that fed the 2007-2008 violence. I had written an opinion piece (Annex 2) in the *Daily Nation*, East Africa's most widely circulated newspaper, on 8th April 2008, pointing out this particular failure of the Accord.⁹⁸

The *Sunday Nation* of 1st March 2009, a day after the first anniversary of the signing of the Accord, would issue a stinging editorial that echoed this op-ed I had written in April 2008 headlined: “*Disband tribal militias before it's too late*,”.

One event was to take Kenyan minds away momentarily from 2008 and its problems. Barack Obama was elected US President. Kenyans can interestingly be outraged by each other while continuing to protectively regard Barack Obama as “one of their own”. Obama's election in November 2008 had created one of those “Kenyans are one” moments that usually happen when Kenyans are winning marathon races somewhere out there in the world. When a Kenyan wins an international marathon, no Kenyan cares what ethnic community the winner comes from. Marathons are watched communally, on televisions in hotels and pubs. When the winning Kenyan crosses the line, every one applauds.

It was the same with Obama's win. I remember driving to work on the morning of 5th November 2008, as the news was announced on radio at six o'clock in the morning that Obama had won. Kenyans from all ethnic communities went wild, cars hooting, motorists stopping their cars in the middle of the road to shake hands, shouting we did it! Our son is in the White House! But once they got back into their cars, they ceased being Kenyans and retreated into their ethnic cocoons again.

Watching these tearful scenes, I thought to myself that for all the joy at Obama winning, Kenyans were truly hypocritical. Obama could never win the Presidency in Kenya, even if he was Kenyan, because he does not have the ethnic numbers to back him. No matter how intelligent he was or what ideology he espoused, it was far easier for Barack Obama to become the President of the US than Kenya, his father's country.

Soon FM radio stations were pre-occupied with an additional issue from the US. A birth certificate that purported that Barack Obama was born in Kenya had been carried in the daily newspapers. Kenyans were quick to poke holes into the allegation, as there were clear discrepancies

between the birth certificate and those issued in Kenya before independence. Whatever the circumstances, Kenyans found themselves in, everyone, from all ethnic communities, defended President Barrack Obama as “our son”.



Cartoon on Obama, Obama, Obama, Yet you can't vote for someone who is not your tribe

Chapter 7

Fear Replaces Optimism: ICC, Migingo and Al-Shabaab

No one is born hating another person because of the colour of his skin, or his background, or his religion. People must learn to hate, and if they can learn to hate, they can be taught to love, for love comes more naturally to the human heart than its opposite.

– **Nelson Mandela**, *Long Walk to Freedom*

In early February 2009, Kofi Annan had given the government two months to establish a local tribunal to try the poll chaos election suspects with a rider that if the political differences continued, he would hand over the CIPEV Report with the names to the ICC. Central Imenti MP Gitobu Imanyara formally made a proposal to the chairman of the Parliamentary select committee on constitutional reforms seeking that Kenya adopts a Sierra Leone model requesting the UN to set up and run a special international tribunal. This was thrown out.

On 10th February 2009, Parliament had been unable to raise enough MPs to vote on a Bill to establish a local tribunal to try the PEV suspects locally, as opposed to the cases being taken up by the ICC. MoJNCCA Minister Martha Karua moved the Bill. There were 119 MPs in the House but 29 more were required to reach the mandatory number of 148. Despite the frantic efforts by President Kibaki, Prime Minister Raila Odinga and Minister Martha Karua, the number could not be raised. The general assumption by MPs was that a Hague trial would take long whereas a local tribunal would be much faster. The MPs therefore preferred a Hague trial.⁹⁹

“Then reports reached MPs that the Government had asked the House Business Committee to list for Thursday the vote on the Bill to establish the special tribunal to try the election violence suspects at home. Deputy Speaker Farah Maalim had earlier announced the vote would be taken on Tuesday. This triggered a flurry of activity at Parliament Buildings among

“the opposition” MPs. Over drinks at the restaurant and in the lobby, they sat in groups to strategise late into the night on how to hand the government a decisive defeat. ...At the end of it all, they arrived at a resolution, which was circulated through SMS. It read: “We have decided that we will provide the necessary quorum and that we vote against the Bill so Kenyans know who is for impunity. Let us not be vague, let us send the criminals to The Hague...”¹⁰⁰

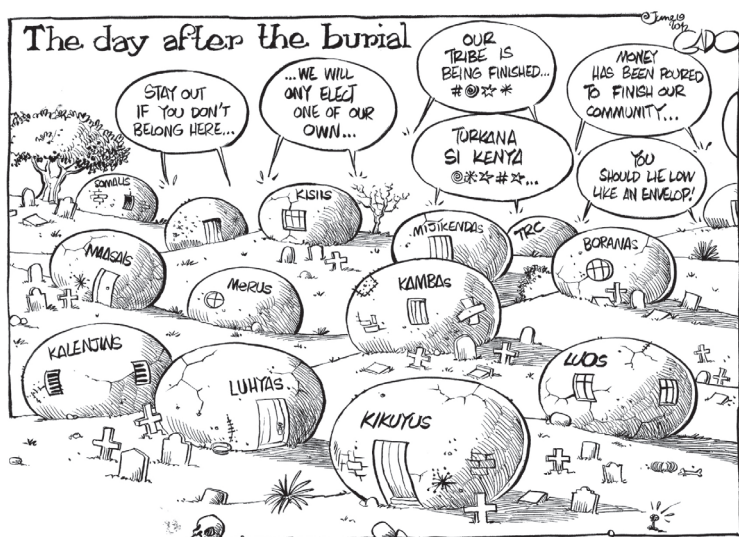
On 12th February 2009, the Bill seeking to establish a local special tribunal in the Constitution got the support of only 101 MPs, with 93 voting against, even though President Kibaki and Prime Minister Odinga attended Parliament and voted. Martha Karua had tried to lobby support for the Bill without success. This meant that Kofi Annan could then proceed to hand over the list of the suspects to the ICC for investigation and trial.

In the meantime, the coalition government continued the quarrels, at one time forcing religious leaders to chastise President Kibaki and Prime Minister Odinga publicly.

Kenyans however saw a rare show of unity among the political class when Deputy Prime Minister Uhuru Kenyatta, Agriculture and Education Ministers’ William Ruto and Sam Ongeru presided over a fundraising for the families of victims of the 31st January 2009, Sachangwan tanker inferno in Molo. More than 130 people had died and 178 were injured in an explosion while rushing to scoop free fuel from an overturned tanker. In one of the ironies of the Kenya of 2009, more than 80 of those who died were buried in a mass grave, together; yet while living, they would have nothing to do with each other as they came from ethnic communities that had fought each other in the 2007-2008 post-election violence.

Meanwhile, plans were mooted to give the Kiambaa victims, all Kikuyu who had been burned to death in a church a decent burial. A group of clergy men from the Rift Valley, Kalenjin and Kikuyu, Bishop Thomas Kogo of the Anglican Church, Reverend Geoffrey Songok of the Reformed Church, Pastor John Tuwei of the SDA church, Pastor Sammy Mbugua of Shalom Relief and Luke Maiyo of the AIC church separately asked President Kibaki and Prime Minister Odinga to ensure

that the 38 bodies of the Kiambaa church victims were buried, and a funeral was planned.¹⁰¹ Two weeks before the burial, the High Court acquitted the men accused of torching the church and its victims over lack of evidence. PNU leaders, led by President Mwai Kibaki, attended the burial, held in early May, more than a year after the killings. ODM leaders including the area MP, Peris Simam, snubbed the burial. Fresh controversy arose over Kiambaa due to plans mooted at the burial, to build a memorial at the site of the Kiambaa church. These plans were met with strong opposition from sections the Kalenjin community.



Cartoon of Kenya's communities: The day after the burial.

War of words

In the same week, Steadman, the opinion poll company, released a poll showing that 70% of Kenyans believed that the Grand Coalition Government had not achieved much.¹⁰² On 24th February 2009, ahead of the end of the first anniversary of the Coalition Government's existence, Kofi Annan had written to invite President Kibaki and Prime Minister Odinga to Geneva to push forward the stalled reforms agenda. ODM indicated its intentions to demand fresh talks on the coalition deal, through its Secretary-General, Prof Anyang' Nyong'o, which it planned to table at the Geneva meeting. ODM complained that PNU

had short-changed it and that it had not been allowed to take part fully as an equal partner in the coalition government. PNU Secretary-General George Nyamweya immediately dismissed their claims, sparking off a new **war of words** within the coalition government.¹⁰³

Parts of the concerns raised were that the National Reconciliation and Accord Act gave the false impression that it was President Kibaki who appointed Mr Odinga as Prime Minister. There were many legal interpretations of the Prime Minister's role. The Accord, Kamotho Waiganjo, a constitutional lawyer argued, had established a legal hierarchy. The President had retained all the powers as before. It was the President who appointed the Prime Minister nominees to Cabinet as his Executive powers were largely left intact. Imenti Central MP Gitobu Imanyara said:

*"[The] Prime Minister made a mistake by accepting an appointment letter from the President. This reduced him from being a principal to just a partner in the whole deal. He also pointed out that during the signing of the Accord, the President did so on behalf of the government and Party of National Unity while Mr Odinga did so on behalf of Orange Democratic Movement."*¹⁰⁴

These discussions followed closely on the heels of Prime Minister Odinga publicly demanding that his salary be at par with that of the President to avoid creating the impression that one coalition partner was junior.¹⁰⁵ This would be closely followed by a contest between the Prime Minister and Vice President over the position of the **Leader of Government Business**. More accusations and counter accusations flew between the coalition partners, including a claim by ODM that government departments headed by PNU Ministers were refusing to cooperate with the PM's office and that the Prime Minister was not consulted when appointments were made in government.¹⁰⁶ There was controversy too in regard to foreign trips by the Prime Minister and Vice President with some MPs claiming that the two were only accompanied by members of their political parties at the expense of the inclusive nature of government.¹⁰⁷

Meanwhile a monitoring report of the KNDR implementation had confirmed, through research, all the negative sentiments that there was no hope in the grand coalition government. Kenyans were also afraid of the probability of chaos in the next elections.¹⁰⁸

A book released by Paul Collier, warned that “Kenya could not move forward while ethnic politics dominated debate, prevented corruption from being tackled seriously, leaving public services systematically worse as a result of ethnic diversity. Contrasting Kenya to Tanzania, Collier faulted Kenyan leaders for failing to build a national identity.”¹⁰⁹

Media/Graphic images

Kenyans were handed a powerful reminder on the PEV by a young photo-journalist, 25-year-old Boniface Mwangi, who with another photographer Yasuyoshi Chiba, released a book, *Kenya Burning* with graphic images so gory that one had a problem turning the page for fear of what would come next.¹¹⁰ The book began with normal pictures of happy looking Kenyans in political campaigns, smiling or looking pensive but not worried, as they patiently queued to vote. Then the IEC chairman is photographed gesticulating to an anxious crowd seeking news of the election results. The pictures that followed gave the book its title; *Kenya Burning*. The pictures were of Kenyans captured in the act of killing each other.

The Push by the International Community

In the same month of March 2009, a three-judge panel at The Hague-based ICC issued a warrant for the arrest of President Omar Hassan al-Bashir on suspicion of war crimes and crimes against humanity in Sudan’s western Darfur region. The Sudanese government refused to cooperate with the Court and expelled 13 foreign and three domestic humanitarian aid agencies, accusing them of collaborating with the ICC. Luis Moreno-Ocampo, the ICC’s Chief Prosecutor said he was confident that the court’s judges would soon charge Sudan’s president with genocide and three Darfur rebels with war crimes.¹¹¹

Meanwhile, the international community was snapping on the heels of Kenya, to ensure that the reform momentum would not be lost. At the end of March 2009, the European Union’s Council of Ministers of Foreign Affairs issued a statement, asking Kenyan leaders to prioritise reforms of the Constitution, elections, police and Judiciary, as well as to end violence and corruption and establishment of a local tribunal.

The US government in turn dispatched the Assistant Secretary of State for African Affairs, Johnnie Carson with a tough message for President Kibaki and Prime Minister Odinga. *We came here to warn a friend about our concerns. We feel the country's stability is paramount to the region. The US is a strong partner and is ready to exercise some degree of muscle. But we will see in the coming weeks what Kenyans can do for themselves.*¹¹²

Kenya's Iron Lady Quits

In a surprising twist of events, Martha Karua resigned from her position as the Minister for Justice, National Cohesion and Constitutional Affairs on 6th April 2009. This interestingly, led to a meeting between the President and Prime Minister to seek her successor. Writing in the *Daily Nation*, columnist Macharia Gaitho said of the meeting:

“President Kibaki and Prime Minister Odinga met yesterday. That was significant because they have not been on talking terms for a few weeks... There is nowhere else in the world I can imagine where the Cabinet does not meet and Parliament is thrown into gridlock merely because the two principal leaders are busy throwing tantrums and will not speak to one another.”

The meeting agreed that Mutula Kilonzo, a lawyer who had cut his teeth as the former President Moi's lawyer, and who had sat on the PNU negotiating team would replace Martha Karua.

Rwanda's President Kagame, speaking during Kenya's national prayer breakfast in Nairobi on 28th May 2009 advised Kenya to seek solutions from within. He said in part,

“The foundation for any successful nation is a deep-rooted sense of national belonging, organically grounded in a sovereign state in which all citizens, in their diversity enjoy and exercise their cultural, social, economic, religious and political rights. This is what is broadly referred to as citizenship. ...We learnt the hard way what no other country should ever experience; when a country allows itself to fail, it has no friend.

Second, the outcome of any conflict is never pre-determined from the outset. For those societies that exhibit features of real or latent conflict, the single most decisive and pressing task facing them, and their leaders in particular, is to confront the root cause of instability before degenerating into conflicts or even wars. It cannot be otherwise, because real solutions cannot come from anywhere else but from within.

*It is only the leaders and citizens of such nations that can fully grasp the high stakes involved – and as such, only they possess the power and tools to arrest the disintegration of their nations. Above all, only they have the home grown knowledge and insights from which to draw and apply sustainable solutions.*¹¹³

Migingi Island Issue

On the international front, Uganda's President Museveni had sparked off a controversy with a quarrel over an island in Lake Victoria, Migingo in the first week of May. The back and forth exchange between Kenya and Uganda on the ownership of the island continued throughout the month. His remarks, from a BBC broadcast, coming after the launch of joint boundary mission between Kenya and Uganda increased the heat. He said in part:

*"The Island is in Kenya and the waters are in Uganda. So what do we do now? The Wajaluo (the Luo) are mad. The boundary continues on a straight line south-westerly to the most northerly point of Sumba Island. Mpaka inasunguka kisiwa (The boundary revolves around the island.) One foot into the water is in Uganda. So I have been telling those Jaluo who have been rioting and wanang'oa reli (uprooting railway line) that I want to go and discuss this with them. If we implement this, (claim the waters), hakuna mjaluo ataenda kuvua samaki buko. (No Luo will fish there).*¹¹⁴

Chilling Al-Shabaab encounter

The Migingo issue was heated enough to ensure the interruption of a report-writing workshop I was facilitating for doctors working in Gedo in war-torn Somalia in August 2009. I was tasked with helping the doctors to write real reports that analysed the conflicts they worked in and not just medical reports that concentrated more on diseases. In the workshop, the doctors had talked of a looming danger, from a Somalia group calling itself Al-Shabaab, the youths. They were, the doctors said, an offshoot of the extremist proponents of the Islamic Courts that had ruled parts of Somalia on and off in previous years. If the Al-Shabaab linked up with Al-Qaeda, they could become something very dangerous, the doctors said. Al-Shabaab needed to be tamed early enough; otherwise it would become a monster capable of destroying

what was left of Somalia and East Africa. On 10th July 2009, Uganda had suffered an attack by people identifying as Al-Shabaab suicide bombers, which had killed 64 people as they watched the world cup finals at a night club.

The doctors shared stories of the dire circumstances under which they performed surgeries in Somalia, often out under the open skies, as there were no hospitals. Others talked of encounters with Al-Shabaab, the ruthlessness that the group operated with, and its utter contempt for life.

One doctor narrated how on one occasion, he was beginning to operate on a patient outdoors, under a structure he had asked the patient's relatives to construct. The relatives waited patiently, chewing khat, (*miraa*) to kill time, as the surgical operations would often take some time.

So absorbed was the doctor in his task that he failed to notice the arrival of a young Al-Shabaab man. He only realised that he had company when the man bent over to stare at the patients' face. Looking up, he saw the relatives slinking off into the bush, trying as hard as they could to be invisible. The Al-Shabaab man spoke gently, his quiet demeanour as chilling as the order he gave.

"Doctor", he said, "I order you to kill this man. He does not deserve to live."

"I am trained to save lives, not to take them." The doctor responded quietly. The patient, who was not fully under anaesthesia, meanwhile began to groan. The patient could hear the conversation, the doctor realised.

At that moment, he said, he wondered why he had left the relative safety of Kenyan hospitals with their predictable malaria and childbirth complication cases for Somalia.

"I literally smelt death, my own death; from a gun held by a boy who was not quite a man, whose fine stub of beard was too young to have been touched by a razor; a young boy with old, cold eyes. I looked down at my patient, whose eyes in turn were alive with rage at being found so helpless in the face of the enemy. Both of them were about the same age. Somalia's youth was killing itself.

"When I looked at the Al-Shabaab boy, I saw the resolve in those cold glinting eyes and prepared myself for the worst, thinking fleeting

thoughts about my death; I would die in ignominy, from the bullet of a child. I would be buried in Somalia,” I thought.

“My family would mourn and wonder like they always did what I was trying to prove by working in Somalia. My reverie was interrupted by the loud sound of the firing of his gun. Without taking his eyes off mine, the boy had shot straight into my patient’s head, right between his eyes, killing him instantly. Turning on his heel, he turned round and walked away, stopping briefly to thank me for the work I was doing in saving the lives of the people.”

There were many other stories like this. The doctors were working under considerable danger. Despite the tension in their work in Somalia, the workshop was more heated over the Migingo issue than the danger they faced every day. Did President Museveni seriously want to start a war with Kenya? They wondered. With Somalia in the state it was, what would happen to Eastern Africa? Who would tell Kenyans never to experiment with war again?

After tensions characterised by debates in Parliament in which MPs from Nyanza castigated the Ugandan President for his comments, President Kibaki declared that the disputed Migingo Island belonged to Kenya. However, the issue was never laid to rest and sporadically pops up to date through quarrels between Ugandans and Kenyans living on the Island.

* * *

Meanwhile, Kenya seemed to be in the grip of something beyond its power. The effects of the violence and the on-going happenings were clearly taking their toll on the citizens. Nairobians, previously normally boisterous people, walked the streets with their backs hunched. Smiles were rare. On one occasion, I was about to get into the Bata shop at the Hilton Hotel in the City Centre when there was a sudden loud noise. By the time we realised it was a tire burst, all the people on the street, myself included, were lying on the ground. Minutes of silence later, I dared raise my head and noticed that many people were instinctively lying in the foetal position.

The Cabinet met on Saturday, 20th July 2009 to make a final decision on the choice between the ICC at The Hague and a local tribunal. After five hours of discussions, they could not reach a decision. Some

members of the Cabinet leaked reports to the media that the meeting ended without agreement.

The Mau forest issue was increasingly taking centre stage as an issue in ODM. Kalenjin MPs in the Rift Valley launched a scathing attack on Prime Minister Odinga, accusing him of targeting the Kalenjin for eviction from Mau Forest. Speaking on their behalf, Chepalungu MP Isaac Ruto told Mr Odinga to forget about any political support from the Rift Valley in future.¹¹⁵ However, the elephant in the room was not the Mau Forest. It was the post-election violence in which the Rift Valley was the largest theatre. It was about the perception that Raila Odinga was washing his hands off people who had fought for him.

The other side of the coalition (PNU) was equally confused in its approach to the search for justice as they assumed:

Renewed hostilities would also complicate efforts to solve the issue of displaced people, thousands of whom had not been able to go back to their homes in the Rift Valley to date. Hence, the tilt for healing and reconciliation rather than trials, the same argument used in July when the cabinet rejected the revised Special Tribunal Bill pushed by Justice Minister Mutula Kilonzo.¹¹⁶

Uhuru Kenyatta, William Ruto and Kalonzo Musyoka had also joined hands to root for an alliance of three ethnic communities the Kikuyu, Kalenjin and Kamba (KKK). The KKK alliance came in for a lot of criticism from all other excluded ethnic communities. Everyone who knew the political mathematics of voting in Kenya recognised the potential of KKK to constitute a formidable voting bloc.

However, it was inconceivable to everyone, except the politicians, how ethnic communities that had fought so hard and so long against each other could now form a political alliance. Truly, the saying that in politics, there are no permanent friends or enemies – only interests, seemed to be true. There was criticism on the KKK formation, with the media drawing a parallel with the racist American group Ku Klux Klan that went with the same acronym.¹¹⁷

On 25th November 2009, a fundraising was held in aid of the Mau Forest eviction victims. It was presided over by Uhuru Kenyatta, Kalonzo Musyoka and ODM MPs and ministers who had broken ranks with the Prime Minister Raila Odinga such as William Ruto and

Najib Balala. Even as the fundraising was going on, it was clear that there were still tensions as “Uhuru conceded that he had been under pressure to skip the function because majority of our people, the Kikuyu, were uprooted from their homes during the PEV and are yet to be resettled”.¹¹⁸

Like the Mau forest, the IDP issue kept coming up. A press statement in the papers from the GEMA expressed concern, pointing out that the IDP’s had continued to languish in transit camps¹¹⁹

Even as the politicians appeared to be striking some deals, there had been fears, since July of 2009 that communities that had fought during the PEV of 2007-2008 would attack each other again.¹²⁰

Minister Mutula Kilonzo finally owned up that the government would not be able to keep the promise it had made on 3rd July 2009 to the ICC to set up a local tribunal by 30th September 2009. At the 3rd July meeting, the Minister had promised to set up a tribunal and provide information on witness protection as well as progress on investigations, to the ICC Chief Prosecutor Luis Moreno-Ocampo. “We will tell him sorry”, the Minister said. Parliament had gone on recess without discussing the Bill tabled by Gitobu Imanyara, which proposed the formation of such a tribunal. The Cabinet had also rejected a similar proposal by Minister Kilonzo.¹²¹

On 31st July 2009, President Kibaki and Prime Minister Odinga addressed a press conference to update the nation on whether or not a special tribunal would be set up. They had given up on a local tribunal and instead, the Cabinet had resolved to engage in security sector reforms and strengthen the TJRC.

Hillary Clinton visit

US Secretary of State Hillary Clinton arrived in Kenya to attend the annual trade and investment meeting held under the African Growth and Opportunity Act (AGOA) that her husband President Bill Clinton had spearheaded in 2000 to increase African Exports to the US.

She delivered a strong message, behind closed doors, from President Barrack Obama. Not surprisingly, the private message was front-page news. The era of confidential Cabinet meetings had ceased as each side of the coalition tried to undercut the other. The US threatened to

impose sanctions on government leaders if they continued to block the formation of a special tribunal to try election violence suspects. She asked the leaders to end impunity and punish those responsible for the violence.

She later addressed a press conference in which she said “we are clearly disappointed that prosecutions have not taken place one and a half years later, even as she asked rhetorically “How do you go about prosecuting these individuals without fanning more violence from their supporters?”

Earlier in the week, the US Embassy in Nairobi and the British High Commissioner Mr Robert Macaire had criticised the Cabinet’s decision to throw out the two draft bills on the local tribunal.¹²²

A heart-rending letter written to Hillary Clinton in the Letters to the Editor page of the *Daily Nation* of 6th August 2009 illustrated the sense of hopelessness among some Kenyans at this particular time. It read:

Dear Mrs Hillary Rodham Clinton,

My brother just got shot on Tuesday, on his way home from work. It was not even 8 pm yet. I called the police, waited by the roadside, with my heart racing every time I saw a police car. None stopped. I wonder now whether they were patrolling the streets in preparation for your arrival. I have not gone to the hospital yet, because I feel lost. Luckily, he will be fine.

I have seen tribal clashes of 1997, the post-election violence in 2007, and I have kept faith in the goodness of men. This confidence has been shattered and the uncertainties have returned. Perhaps this is the final disillusionment.

Today, I do not want to know about the AGOA meeting, what America will do about the energy crisis, pirates or how much the US will give to the thousands of NGOs operating in my neighbourhood. I just want to know whether I will ever call the police and they come. Whether something will be done so that people who live here are safe, free from crime and violence, what will be done so that ethnic violence does not happen again in Kibera?

These are problems that I cannot run away from. For the first time in my life, I know fear. This is my act of courage.”

Aisha Abdulaziz, Nairobi.

Aisha's questions on one front, on how much the US would give to NGOs were answered shortly thereafter. Donors, wary of pumping money into a feuding government pledged Ksh. 44 billion for peace-building. The Office of the Coordination of Humanitarian Affairs (OCHA) that coordinates humanitarian affairs had already released Ksh. 11 billion by August 2009 to peace building activities.¹²³

At the end of September, US Assistant Secretary of State Johnnie Carson wrote letters to 15 Kenyan officials banning them from traveling to the US, prompting a harsh protest from the Minister for Foreign Affairs, Moses Wetangula. He was supported by calls through the media for the US to give diplomacy a chance.

The *Daily Nation* editorial of 29th September 2009 snapped, *The breach in diplomacy by US Ambassador Michael Ranneberger and his boss, Johnnie Carson in writing letters to Cabinet ministers without making any reference to any government authority was in bad taste. We may have diluted our sovereignty, but not our dignity as Kenyans.*

Enter Luis Moreno-Ocampo

In July 2009, Kofi Annan handed over the list of the alleged perpetrators as named in the Waki Report to Luis Moreno-Ocampo, the Chief Prosecutor at the ICC. The Kenyan Government was then given one year, beginning July 2009, to set up a tribunal to deal with the cases. Failure to set up a local tribunal would see the ICC take over the cases in August 2010.

The push from the international community then began to coalesce around the ICC, buoyed by actions from Luis Moreno-Ocampo who had appointed a 14-member team to work on the cases. He arrived in Kenya on 4th November 2009 and had a meeting with President Kibaki and Prime Minister Raila Odinga that effectively set in motion the start of Kenya's engagement with The Hague. The Principals declined to make a government self-referral to the ICC, which meant that Moreno-Ocampo would now exercise the remaining option – launching investigations on the cases. Moreno-Ocampo informed the Principals that in accordance with Article 15 of the Rome Statute, he would in December 2009, request authorisation from the pre-trial chamber to open an investigation.

He communicated the decision immediately on the same day, in a letter dated 5th November 2009 indicating his intention to submit a request for the authorisation of an investigation into the Kenyan situation. Judge Sang-Hyun Song, ICC President, appointed a three-judge bench that would consider the request to authorise the opening of the prosecution of the Kenyan case. The three judges appointed were Judge Cuno Jacob Tarfusser, Judge Hans-Peter Kaul and Judge Ekaterina Trendafilova. The judges were to either grant Moreno-Ocampo the authority to start investigations, reject his request or ask him for more information. Moreno-Ocampo conducted himself with complete confidence and swag, even taking the time on the same day he submitted his request to The Hague to tour the Nairobi National Park and adopt a cheetah.¹²⁴

The following day, Moreno-Ocampo held a press conference, his Argentinian accent seeming to lay more emphasis on the grave words he uttered, that he was close to completing investigations.¹²⁵

On the same day, the media run a feature on a scarred Bernard Orinda Ndege who lost his family during the PEV. He wanted to meet Moreno-Ocampo, he said.¹²⁶

The ordinary citizens were upbeat about the ICC. Moreno-Ocampo was easily the most popular person in Kenya at the time. His image beamed down from every other *matatu*, renowned for their street art. He was regarded as a hero. Children nicknamed their tough school principals 'Moreno-Ocampo'.

The media had helped raise the status of Moreno-Ocampo, dedicating a lot of space to write about who Moreno-Ocampo was. He had been a visiting Professor in schools with big names such as Harvard Law School and Stanford University. He had been a prosecutor in his native Argentina, presiding over the trials of members of the military junta, which committed grave crimes during Argentina's years as a dictatorship. Above all, Moreno-Ocampo had been elected unopposed in a ballot of more than 70 countries which had ratified the ICC's founding statute. Kenyans considered Moreno-Ocampo the ultimate slayer of impunity.

PART III:
ONE KENYA, ONE PEOPLE: LAYING
THE FOUNDATION



Chapter 8

Intrigues that Set the Cohesion Agenda: NCIC Birth

Have a conversation with yourself every evening, confirming that you have done your best for the country and the Kenyans who suffer most as a result of our destructive ethnic politicking.

– Vincent Nderitu, My father

In the heat of the discussions and activities around the ICC, the Chief Justice swore in my colleagues and I as Commissioners of NCIC on 8th September 2009. We were all Kenyans. Our chairman was Dr Mzalendo Kibunjia. We elected Mary Onyango as the vice chair. The other members were Halakhe Waqo, Milly Lwanga, Jane Kiano, Fatuma Mohammed, Dr Ahmed Yassin, Rev. Lawrence Bomett and myself, Alice Wairimu Nderitu. MoJNCCA Minister Mutula Kilonzo and the PS Amina Mohammed were on hand to witness our swearing in. On 30th September 2009, the Chief Prosecutor Moreno-Ocampo posted a statement on the ICC website in which he said that he intended to make “Kenya an example on managing violence”.

We began by reviewing what our sister Agenda 4 Commissions had been doing. By the time Parliament concluded the process of setting up the NCIC as the last and only permanent of the Agenda 4 commissions, IREC and CIPEV had completed their work and left the scene. The other five commissions CoE, IIEC, the TJRC, IIBRC and IICDRC were already functional.

. With the establishment of the NCIC, the question was: what did this mean for Kenya?

We reviewed other reports. Vision 2030, Kenya’s blue print for development launched in 2008, was relevant as it listed ways of promoting processes for peace building and reconciliation. KNCHR

had released a report on 15th August 2008.¹²⁷ Their key finding was that the violence was widespread and happened immediately after the announcement of the presidential election results, affecting 136 constituencies in six of Kenya's eight provinces, Nairobi, Rift Valley, Nyanza, Western, Coast and Central. Only Eastern and North Eastern provinces of Kenya were spared the violence.

Their findings on ethnic violence had been; forcible evictions and mass displacements of people not indigenous to particular regions took place; there was a clear nexus between elections and commission of violence. Violence became a strategy for remedying political and resource grievances, which the electoral process might have been unable to resolve.

The ethnic targeting also adopted a gender lens as sexual and gender-based violence occurred throughout the theatres of conflict.

The report critiqued the government's slow response, use of excessive and lethal force by the law enforcement agencies and the collapse of the rule of law. The ethnic bias also got into the professional way of the reaction of law enforcers.

The media too was faulted for ethnic bias. Those broadcasting in local languages influenced or facilitated the influencing of communities to hate or to be violent against other communities. Live phone-in programmes were particularly notorious for disseminating negative ethnic stereotypes, cultural chauvinism and the peddling of sheer untruths about the political situation or individual politicians.

Even the faith-based organisations were not spared the ugly brush of ethnic bias; Faith-Based Organisations (FBOs) played both positive and negative roles during the post-election violence. The partisanship of some FBOs had become apparent during the 2007 election campaigns; and such organisations lost the credibility necessary for them to be impartial arbiters after the post-election violence. Even after the violence began, some FBOs simply chose to defend the positions of the ethnic communities with which they were associated. At the same time, however, some FBOs were at the heart of efforts to provide succour to the population of Kenya, which became internally displaced as a direct consequence of the post-election violence.

KNCHR chillingly pointed out that Kenya was a prime candidate for the crime of genocide.

On macro-economic costs, an organisation that documented the cost of the violence to Kenya's economy, *One Earth Future* made the following observation; "In addition to the massive human costs, in lives lost, individuals injured, and communities displaced, the post-election violence in 2008 delivered massive economic damage on the country. Kenya's GDP growth rate in 2007 was 7.1%. In 2008, following post-election violence, it plummeted to 1.7%, and did not return to average growth rates until 2010."¹²⁸

We had enough work on our plate as NCIC. A secretariat had been appointed to deal with the Mau forest issue mentioned in the previous chapter to coordinate the removal of the communities headed by Rift Valley PC Hassan Noor.¹²⁹ The Mau Forest issue had now escalated to former President Moi accusing President Kibaki of mistreating the Kalenjin people who were to be evicted from the water tower. There was some politics to this as Moi himself was alleged to own land in the water tower.

President Kibaki had ordered the resettlement of all genuine internally displaced people in two weeks. The number given of IDPs residing in 19 camps was 6,802 people.¹³⁰ There were reports that more than 500 IDP families in Eldoret had refused to leave the camp until they were allocated alternative land. They had been in the camp for 19 months since the violence. They were to be offered new land to go to under ironically named "Operation Rudi Nyumbani" (Operation go back home), yet they were not returning to their original homes. They were to receive Ksh. 35,000 each as compensation to resettle elsewhere.¹³¹ The IDPs in the camps, many of them Kikuyu, made news frequently, yet there were other IDPs, mainly from other communities, integrated into families that were not budgeted for or had received less compensation.

Another development was an arms mop-up targeted at ridding pastoralist's communities in upper Eastern and the North Rift, of illegal weapons. The disarmament exercise, "Operation Dumisha Amani II" intended to mop up more than 50,000 illegal arms in civilian hands. The mop up was supposed to contribute to ending violent

incursions by the Borana, Dassanech, Turkana, Samburu and Somali communities against each other.¹³² An attack between the Dassanech and the Turkana, had left Julius Loudi, a Turkana elder devastated. He had asked a poignant question that reminded me of the vision I had articulated at my interview of bringing the undocumented into the documented world:

Is Todonyang on the map of Kenya? Does the government realise there are people living here? We hear that in other places, police come when people are killed. Why does no one ever come here when some of us are killed? We have a police station here, but what is their work?¹³³

There were so many places with illegal arms. In Marakwet, a District Commissioner (DC) had issued a shoot-to-kill order for armed bandits and given those with guns a month to surrender them. In Tana Delta, the DC had given the locals two months to surrender arms. Moyale DC gave locals a one-month ultimatum to render illegal firearms to the police. The North Rift Deputy Provincial Commissioner (DPC) in charge of Trans Nzoia and West Pokot districts said the “region is known to have thousands of illegal guns in private hands”. The DPC’s remarks “came in the backdrop of reports that communities in the province were stockpiling arms ahead of the 2012 elections.”¹³⁴

This would be followed by the news that the planned forceful disarmament in Tana Delta had been put off, following, “impressive voluntary surrender of illegal firearms by civilians. The illegal firearms were blamed for increased cattle rustling and tribal clashes”.¹³⁵

The Cabinet was quarrelling publicly, again. They did this often, which was an oddity that we had come to identify with the coalition government. This time, it was over a split on whether the ECK chairman Samuel Kivuitu should be sacked as IREC had recommended. Prime Minister Odinga led the team that said he should be sacked while the Vice President Mr Kalonzo Musyoka said he and his team should remain in office while the commission’s weaknesses were being addressed.¹³⁶

Meanwhile, Kofi Annan was back in town. One of the key areas of concern that Annan had raised with the principals was increased cases of crime in the country. Local and international media investigations had revealed that residents were buying guns, allegedly to protect

themselves should violence recur. Prof George Saitoti, Minister for Internal Security denied that there was rearming of militias even as Bishop Stephen Kewasis said thousands of illegal arms in cattle rustling prone areas of the North Rift could easily be used for wrong reasons.”¹³⁷

Newspaper headlines such as this welcomed the formation of NCIC. *‘Tribal hate politicians to be jailed for 5 years in new law: Five women are in a team of eight that will pursue people who promote ethnicity and recommend their prosecution.*’ The expectations on the NCIC team to deliver were very high. However, it was not lost on me that Kenyans were thinking more of prosecution than cohesion. In three years, we were expected to painlessly erase all the stereotypes, prejudices and discriminations that Kenyans had harboured against each other for decades and in short, create an ethnic community called Kenya. We were to learn in a short time that Kenyans expected a painless delivery in the birthing of this new ‘ethnic community called Kenya’. NCIC set out in search of Kenya’s soul.

Chapter 9

Finding our Feet: Our Mandate

This job we have been asked to do, it is equivalent to being given a poisonous snake in a beautiful delicate gourd. We have been asked to kill the snake but not break the gourd. We are asked to kill ethnicism without breaking Kenya. This is the most difficult job that anyone in Kenya has been tasked to do.

– Commissioner Halakhe Waqo at the first NCIC meeting

The NCIC had been established under the National Cohesion and Integration Act 2008, No 12 of 2008. We were conscious that the Act had been enacted after the 2007 post-election crisis and the subsequent political negotiations. We were constantly reminded that Kenyans had retreated further into their ethnic cocoons, both to find meaning on their identity, and also to seek protection among those they considered their own.

We knew that in as much as NCIC was established as one of the instruments to respond to the post-election crisis, the key mandate of promoting peaceful and harmonious coexistence was not to be limited to the area that was affected by the election violence. Section 25 of the NCI Act, 2008 defined the Commission's objects and functions in general as being: to facilitate and promote equality of opportunity, good relations, harmony and peaceful coexistence between persons of the different ethnic and racial communities of Kenya, and to advise the Government on all aspects thereof.

One of the most important aspects of our mandate, that would define our work greatly, was on *hate speech*. The constitution did not expressly prohibit hate speech, but the 2007 general elections were characterised by hate speech in party campaign rallies, text messages, e-mails and posters. On the offence of ethnic or racial contempt, the Act provided that;

62. (1) Any person who utters words intended to incite feelings of contempt, hatred, hostility, violence or discrimination against any person, group or community on the basis of ethnicity or race, commits an offence and shall be liable on conviction to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding five years, or both.

(2) A newspaper, radio station or media enterprise that publishes the utterances referred to in subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding one million shillings.

The IREC report had specifically said on hate speech that;

Words and phrases such as “settlers”, “let’s claim our land”, “people of the milk to cut grass” “mongoose has come and stolen our chicken”, “madoadoa”, and “get rid of weeds” aired by KASS FM and songs such as “talking very badly about beasts from the west”, “Kijji” and the song by Minga Njoroge sung in Kikuyu dialect on Kameme FM and Inooro FM stations which implied that Odinga is a murderer, power hungry and does not care about other tribes but only his own tribe, and that the Luo are lazy, they do not work, they do not pay rent and that they are hooligans, were received by Kenyans with mixed feelings.

Luo stations also played a song “the leadership of the baboons” which vilified the Mount Kenya people.”¹³⁸

The promotion of peaceful coexistence and ending hate speech meant that we had been given the carrot and the stick. Initially, this was a great idea. NCIC had the power through the carrot to promote peaceful coexistence and the stick to act against hate mongers. In the long run, this power would turn out to be a poisoned chalice. Those who indulged in hate speech and ethnic incitement were mainly politicians, the people we needed most to promote peaceful coexistence among ethnic communities. The same politicians were also our employers as NCIC, we reported to Parliament, to them; yet they would top the list we had of hate mongers. In view of this, we decided to develop various strategies and initiatives to respond to ethnic, religious and race related violence, hate speech, discrimination and inequality as an initial effort towards a more harmonious and integrated society.

We had scant information to guide us in terms of previous work on the ethnic and race agenda.

Past presidents had acknowledged the enormity of the task that we now faced. President Jomo Kenyatta's Madaraka Day speech of 1965 had said of efforts at unifying the nation:

"But unity cannot be taken for granted. There are many forces that do not want to see us remain united. There are some people who remain tribalists at heart, and who regard unity as their enemy. (...) To remain united, we must remain vigilant".

In his Madaraka Day speech of 1966, President Jomo Kenyatta acknowledged the ethnic schisms.

"Throughout our struggle for independence one of our greatest obstacles was tribalism, which was played upon by the colonial regime. (...) Every man has the right to take a pride and interest in his tribe – its history, its culture and its customs. We see a healthy expression of positive tribal feeling in football teams, social clubs and welfare societies. But what we will not permit is the exploitation for tribalism for political ends. Those who try to whip up tribal feelings for political advantage are doing a great disservice to themselves, to their fellows and to the Kenya nation."¹³⁹

President Daniel arap Moi's biographer had written thus of Moi's efforts at nation building:

"Culturally, the focus of allegiance for many Kenyans is the tribe, rather than the nation, a tension which is made manifest in the perpetual debate about central government versus '*majimboism*', or regionalism, and in the conflict between westernised urban dwellers and the more traditional, semi-pastoral rural people.

This conflict is expressed politically fragmented, tribal-based political parties, where tribe, not ideology determines party allegiance. Moi is acutely aware that, because the state was artificially formed, the level of patriotism and national consciousness is low. Since independence, much of the sense of nationality has had to be created, and then reinforced through such means as the Harambee self-help programmes, in order to bind Kenyans to the country.

One of the President's arguments for the continuation of the one-party state, centred around KANU, was precisely because it bolstered a sense of nationhood in a divided people. 'The difference between Kenya and Britain,' he says, 'is that if there

was no Tory or Labour Party, Britain's culture would remain because the country came into being as a nation state before political parties arose. But in Kenya, the country is in part defined by the existence of its political party, especially as KANU is the only national party.¹⁴⁰

The Akiwumi Commission's report of 1999 had set out a number of recommendations after their investigations and *listed hundreds of people that "should be investigated regarding their role in the tribal clashes as recommended in this report."*¹⁴¹ Categories of people identified for investigation included security intelligence officers, police officers and politicians. The recommendations of the Akiwumi report were not implemented.

* * *

We saw the role of NCIC as nudging Kenya along to first acknowledge its present reality before becoming a nation. Kenyans were, in many aspects divided based on ethnicity or race. The consciousness of ethnic identities permeated communities deeply and was felt both in the public and private sectors. NCIC would have to address the need for affirmative action to support marginalised sections of society. The need to bring all communities at par, to realise equality of opportunity would have to happen to support huge marginalised sections of the Kenyan society. This meant that NCIC would have to influence national policies, laws and institutional practice.

We envisaged our work as a collaborative initiative with layered interventions at community, national, regional and international levels. We would work with civil society, policy makers and FBOs.

The National Steering Committee (NSC) on Peace Building and Conflict Management would prove to be a particularly important partner because it convened the District Peace Committees (DPCs) formalised by the KNDR.

NCIC had a huge task in working towards instilling in every Kenyan a responsibility to work towards national healing, cohesion and unity. We also knew that we would be working to effect change of political nature such as power, equity and governance, while at the same time working to create a cohesive society that respected differences be they race, ethnicity, religion, cultural, socio-economic, ability or inability.

Differences that should have been a source of diversity if harnessed properly, and a unifying strength, were a source of conflict. Unequal power relations, unaccountable leadership and social exclusion characterised Kenyan political leadership.

Was NCIC going to play a significant enough role to ensure that the transition period between the two elections, the time of the life of the Kofi Annan Accord would contribute towards Kenya's elusive search for a new inclusive order?

In a bid to prioritise our work, we analysed the key causes of the 2007-2008 conflict. The PEV had opened wounds of issues related to the causes that had been simmering for a long time and that had been unaddressed.

Community and cross border violent conflicts have existed in Kenya before and after independence in 1963. These conflicts manifest mostly as political, economic, environmental and natural resources-related conflicts and inter-ethnic clashes. Ethnicity is not in itself a cause for conflict, competition for resources from ethnic communities is. Kenyans will usually coexist peacefully until their ethnicity is linked with threats of exclusion. Ethnic groups are usually ready to defend their physical, social and economic security if they are under threat. Communities that settled out of their "natural" homes are routinely called "foreigners" who are viewed as having taken land and other resources from the indigenous groups.

Ethnic identity is simply constructed and exploited as a means of mobilisation. Politicisation of ethnic and clan identity plays an important role in identity, perceptions and interpretation of events in Kenya. This particularly happens through manipulation of inter- and intra-ethnic group dynamics by the political leadership. Ethnicity is ascribed to stereotypes and prejudices that cause conflicts due to their linkage to politics or resource allocation.

The introduction of multi-parties in 1992 gave rise to protracted and institutionalised waves of politically instigated ethnic and land conflicts.¹⁴² The 2007-2008 violent conflict gave face to the simmering tensions, culminating into the most visible conflict in post-colonial Kenya.

Terrorism, witnessed during the 1998 bombing of the American Embassy and the 2013 Westgate Mall killings, was also part of the violence.

In summary, the key reasons that cause intra- and inter-ethnic divisions in the Kenya include; Colonial legacy – the use of force and the creation of native reserves along ethnic lines inhibited integration and created a layered labour society determined by ethnic group. This also led to stereotypical and parochial derogative terms that evolved a segmented society; Political parties formed along ethnic lines; Exclusion of some ethnic groups from decision-making positions; Inequitable distribution of opportunities and resources; Short-lived nation building project that enhanced ethnic differences; The majoritarian electoral system that ensured that the winner takes it all, undermined the nation-building project, and left no space for those defeated politically. This had made elections, with political parties consisting of ethnic communities, a do or die affair; Corruption.

We split as commissioners into four committees: Administration and Finance, Education and Communication, Research, Policy and Planning and Enforcement and Complaints. I chose to work in Education and Communication and was appointed convener of a team of three commissioners. I would put my vast experience in the two areas to good use having established the human rights education department of KNCHR and worked for Fahamu as Director for Education and Social Justice. I believed that away from the short-term issues, education was key to changing attitudes and behaviour that led to the stereotypes and discrimination. The task before us was enormous.

I had my personal worries. The NCIC would, if we worked well create a cohesive climate for the transition that was then expected to happen in August 2012. The negative peace that I had written of in April 2008 after the Accord still persisted. How were we to speak to people about living in harmony when their communities' grievances had not been met? A lot depended on the TJRC yet their mandate was extremely overloaded.

During the post-election violence of 2007-08, peace building and human rights practitioners had come together to create a formidable force for peace. After the calm returned, the two groups retreated into their comfort zones from where they would occasionally disagree on what came first, peace or justice. The peace promoters focused on

peace-building initiatives geared towards preventing conflict in the next elections. Human rights practitioners focused on justice as an agenda.

I believed that peace-building could only be entrenched in the fabric of a society when there was a confluence of support from multiple stakeholders such as women, grassroots' communities, state and non-state actors. After years of teaching human rights declarations and conventions, I had become increasingly frustrated. Frequently, I asked of my colleagues, what were we achieving? The people we trained asked us the same questions. We were training them on international legal instruments that they could only apply remotely in their lives, if at all.

Yet in all the conflict areas that we worked in, the human rights concerns and violations related to land ownership, competition for water and pasture were really the root cause of the violence. Writing in the *Berghof handbook No 9*, I had criticised this disconnect between the peace building and human rights' worlds saying;¹⁴³

The challenge for human rights organisations is that they mainly use the same tactics whether they work in peaceful societies (to promote and protect human rights) or in conflict societies. The traditional methods are mainly advocacy, investigation and monitoring, and human rights education. In a conflict situation, the same methods are frequently used. This may include sending out reports that highlight the differences between what the state has signed up to and the real situation. If this strategy has little or no impact in a conflict or post-conflict situation, new imaginative strategies needed to be found.

A new approach that would, in my view, help ensure effective complementarities between conflict and human rights practitioners would involve: Ensuring an appropriate legal framework that addresses both conflict and human rights. Recognising the relevance of human rights obligations that are not necessarily based on (international) laws but that could be part of traditional practice and culture. Defining clear and specific objectives, expected results and, responsibilities for integrated teams with a (complementary) human rights and conflict transformation agenda in mind. Promoting human rights principles as conflict transformation values, i.e. conflict transformation solutions can be founded on the basis of shared needs common to all people and well-understood interests, which, depending on where you stand,

are human rights concerns. Encouraging community participation and ownership of both the conflict transformation and human rights agendas; including identifying conflict transformation change agents from within the post-conflict society itself.

I was not criticising in a vacuum. I had been able to link the human rights-based approach to development to conflict prevention methods based on the successful examples of the implementation of a conflict prevention course I had taken, administered by Oxford University in 2004.

I was also concerned that there was no international legal response to ethnicism. The International Convention on the Elimination of Racial discrimination (ICERD) to which Kenya was signatory existed and its special rapporteur Prof Githu Muigai was Kenyan. However, it was too broad and focused mainly on racism. I had worked in the human rights commission and a myriad of international framework of conventions and laws had supported national human rights interventions. Kenyan AG Amos Wako had in April, been elected as President of the Durban Review Conference on Racism, Racial Discrimination, Xenophobia and Related Intolerance. This too, focused mainly on racism, not ethnicism.¹⁴⁴

We then asked of ourselves as NCIC commissioners, were there people who have demonstrated great or exceptional leadership on ending ethnicism that we could consult? We now needed to consult voices from without, as all solutions could not come from within. All commissioners agreed to consult widely within their circles on what we could do to move and concretise these agendas further, to form the basis of a strategic plan.

* * *

My last assignment at the organisation I worked in, Fahamu, was at the Change Conference in October that we had been organising in partnership with Society for International Development (SID), hosted by the Swedish Embassy. Duncan Okello of SID and myself coordinated the conference.

The conference's objective was to create space for dialogue by agents of change to enable the sharing of experiences and best practices in

sustained change in development policy. At the conference, I made the opening remarks on behalf of Fahamu and SID, the hosting institutions. The others who spoke at the opening session were: Eric van der Linden, the European Commission head of delegation, Ms Ann Dismorr, Ambassador of Sweden, Ms Amina Mohammed, and Mr Mutula Kilonzo respectively, PS and Minister for Justice, National Cohesion and Constitutional Affairs and Prime Minister Raila Odinga. Dr Mukhisa Kituyi, former Minister for Trade, chaired the first session.

I had discussed my speech the previous evening with a team led by Paddy Onyango, popularly known as “elder,” the conference chief rapporteur. Mr Onyango is founder of the 4Cs, an organisation that had been very vocal in pointing to the need for constitutional reforms. He advised me to be brave and set the agenda for the conference. The gist was on my fear of the window of opportunity for dialogue closing on Kenya once again as our leaders dithered. My comments elicited a heated response from the leaders, especially Mr Odinga and Minister Kilonzo, Minister for Justice, National Cohesion and Constitutional Affairs.

Part of my speech read:

But why change, why citizenry? Why development – and why now? Development wise, sounds of construction can be heard all over the capital, we have new roads being built everywhere. A number of reforms have happened in the past years especially in public delivery sectors that benefit the citizenry. There is change. The big question remains: so why does the ordinary Mwananchi feel that the more things change the more they remain the same?

I can advance many reasons, one of which is that we are an episodic country – like a soap opera. We forget fast and have no collective memory of the urgency and emotion that drives us. We have different potential visions for Kenya, not in itself a necessarily bad thing. But we need to create forums such as this to discuss and demonstrate the competition between various potential visions we have for Kenya. For example, we have visions of a human rights state, yet we have ethnic nations walking hand in hand with visions of a developmental state. Where then is our nation state? What brings us together, what pulls us apart?

In preparing this programme we looked for change agents – generals – because you see – you cannot win a war using borrowed generals – you can only borrow foot soldiers. The people who have brought change to this

country, many in this room today, began to do so by first realising as individuals that they needed to do something. They became generals when others began to buy into their ideas.

*We encourage all participants to share not just their experience but also importantly, their own **interpretation of their experience**. To achieve our objectives, this is most crucial, the recognition that in order for us to realise fruitful dialogue on change, citizenship and development, and to learn from each other, we must participate in the process of our own examination of change from a personal perspective.*

Kenya is in a liminal moment. The space is open to negotiate several possibilities. This moment needs to be transformed into a Constitutional moment and not necessarily from a legal perspective. The window of opportunity is not closing; it's too wide open now. There are good people working passionately for this country. The momentum of the 1990s, people brought together by a common goal with no ethnic agendas must happen.

How do we recognise these moments? How do we recognise change when it happens? We are expecting a strengthening of our conceptual narrative of change in relation to citizen and development. (...)

Mr Kilonzo threw the ball back in my court. Staring sternly at me, he told the audience that I had recently been appointed as a commissioner at the NCIC and, therefore, I was in a position to do something about the issues that I had raised, including bringing on meaningful change on ethnic relations. He also listed the gains made by the KNDR, including setting up various commissions to tackle the various challenges Kenya faced.

The Prime Minister, Raila Odinga, said he was keeping down his written speech to respond to the issues I had raised. He began with my last sentence. Addressing me directly, he said “Nderitu, things have changed. For you to even have such a meeting and speak without fear, a lot of things had to happen. It may not be visible in the same way as the construction of a new building, but things have changed.” “We”, he said, “had to make a lot of sacrifices.”

Mr Onyango was right. I had set the agenda for the conference.

He (Raila) then told us his story. This was the first time many of the people in the room, majority of whom had been in the struggle with him, heard him open up personally about how he had escaped from the country dressed as a Priest. He spoke of the suffering many of

them had gone through to achieve change. He had been tortured and hunted like a wild animal in his own country, he said. He said that those who complained most about lack of change were the youth, and after complaining, they asked for opportunities. “How can opportunities come if you do not work for them? When I was a youth, I did my bit for this country. Go do your bit.” He asked the people in the room not to allow the country to slide back into a state of repression.

Raila said it would be wrong of us to discuss change without anchoring the discussion on a historical perspective. We had to trace the genesis of the struggle for change in Kenya from the colonial period. Post-colonially; Kenya’s struggle was informed by the existence of two forces, with one group pushing for change, and another group calling for retention of the status quo. In all this, the issue of land was isolated as being central in the struggle for change in Kenya since the colonial period.

The other issue was the Constitution. There was unanimity that the immediate post-independence Kenya Constitution was good in the sense that it provided for separation of powers. However, there were various amendments to reverse this and to turn the country into a one party state. This conspiracy was ostensibly based on pursuit of African socialism.

The civil society organisations existing at the time when Kenya experienced the worst form of repression perpetrated by a monolithic single party were weakened and coerced into serving the interests of the dictatorial government.

The conference, he said, underscored the progression of change in the country. “Such meetings, Nderitu, would not be permitted in Kenya’s repressive past”. He then challenged the conference to come up with practical ways of developing a change framework capable of delivering on the Kenyan dream as espoused in the Kenya National Anthem and Vision 2030. Change in the political dimensions of the country has to be related to economic aspects, especially by ensuring equality of the people.

Meetings with the media owners and editors

During the initial days of NCIC, we visited several media organisations to talk about national cohesion and integration. I arranged all the

meetings, drawing on my earlier networks when I worked at the *Daily Nation* as a news reporter. The visits did not cost any money, yet they helped us to establish direct links, which would prove to be invaluable.

The year 2007 had been very bad for journalists. At almost every political rally, they were being attacked on the basis of which political parties the media houses they represented were perceived to support. It got to a point where there were political rallies that some media couldn't cover. Year 2008 was worse for the media when politicians blamed the media for inciting violence, which was not very far from the truth for vernacular stations in particular. This meant that the media came in for a lot of scrutiny from the Waki Commission. We needed to work with them and disabuse the negative notions about them.

Kibera field experience

Our first field experience in NCIC was in Kibera, which Jane Anyango organised for us through Chief Juma with 22 elders drawn from different communities in the area. The discussion centred on a recent spate of fighting between the Nubian and Luhya communities in which two people had been injured and one killed. As the meeting continued, it turned out that the real issue was land ownership and access to resources going back many years.

We felt drained by the experience as commissioners, coming face-to-face with huge expectations, poverty and a huge amount of historical baggage and anger against government by the communities in Kibera, that NCIC was expected to deal with. The Kibera meeting made us realise several needs that would prepare us for future public engagements such as translating the NCI Act, 2008 into Kiswahili.

We also needed a meeting with other Agenda 4 Commissions to agree on referral mechanisms from one commission to the other.

Back in the office, we were facing a financial crisis. Other Agenda 4 Commissions had started off in the same way, without funding. But they had succeeded in getting money after inviting the media to their offices and sharing their financial woes publicly. We had decided to keep our disagreements with the Ministry away from the media, as the impact would be more negative towards NCIC as the nation's instrument for cohesion.

On 19th June 2009, the Ministry had appointed a committee to prepare and organise a National Elders Conference on Cohesion and Integration prior to our appointment as NCIC commissioners. Their mandate of course was on a direct collision path with the NCIC, once we were in office. In our first meeting with the Minister for Justice, National Cohesion and Constitutional Affairs Mutula Kilonzo, we told him that it was not possible for the two bodies to operate with similar mandates. He said that the elders had only been created to fill in the vacuum before NCIC assumed office and would hand over to us. They however, proceeded to hold meetings across the country on the causes of conflict and how to resolve them. They were preparing for an elders' conference and these meetings cost a lot of money, which they had and we were not getting as an Agenda 4 commission. We decided to go along with the Ministry as our policy was to avoid public confrontation.

Kofi Annan had come back to Kenya in the first week of October 2009. All Agenda 4 Commissions were to meet him, except NCIC, the Ministry of Justice, National Cohesion and Constitutional Affairs (MoJNCCA) said, as the elders were meeting him; two cohesion teams would bring confusion. We swung into action, reaching out directly to Kofi Annan behind the scenes. We got an appointment and decided not to use the meeting to fight the elders, but instead to walk him through the functions of NCIC. The vice chairperson, Ms Mary Onyango, led the delegation as the Chair was away and explained our predicament to Kofi Annan. She began by saying 'we have started walking but we are limping. We have the will and passion, but have no money to achieve all this,' we told him. We asked him to tell the principals to give us funding.

Chapter 10

Honing our Strategy: The Crucial Agenda, Critical Threads, Triage

Never doubt that a small group of committed people can change the world.

– Margaret Mead

The Ministry of Justice, National Cohesion and Constitutional Affairs (MoJNCCA) and the United Nations Development Programme (UNDP) organised an orientation meeting at Naivasha Simba Lodge.

The strategy envisioned by the Ministry and outlined by the PS, Ambassador Amina Mohammed was that NCIC would work closely with the Cohesion Department – not be supervised by the Cohesion Department.

Ms Amina cautioned that Kenyans were relying on NCIC to address the root cause of violence and were waiting to see the results and impact. She said NCIC must end impunity and ensure that the next General Elections were peaceful. She added that resources and structures should be put in place to avoid recurrence of violence. These brief words left no doubt about the Ministry's expectations. She assured us that the Government would ensure independence and non-interference in the Commission's work. When she left, the Ministry officials changed tack. NCIC cannot operate independently, we were told. The opinions the elders had picked up would define our strategy and policy options. However we knew the NCI Act was very clear about the reporting lines.¹⁴⁵

On 10th February 2010, NCIC met with Parliament's Equal Opportunity Committee chaired by Hon. Mohammed Affey. This meeting set the foundation of a very strong relationship between our two bodies. We agreed on how we would work together. This was important, as many of the issues we dealt with that touched on

ethnicity would inevitably prove controversial. The Committee would be our voice in Parliament particularly on issues that would need the protection of Parliamentary privilege to be said. We invited the media to cover the meeting. Of particular importance was the reassurance of support by Hon. Affey that “at this time when the country is healing, we want every government department to have the face of Kenya” and NCIC should work on that. Hon. Affey also promised that the committee would summon any minister implicated in exclusionary ethnic-based recruitment.¹⁴⁶

Evolution of friends of NCIC team

Away from the few sideshows, the meeting organised by MoJNCCA was defined more by results rather than tensions. The convener from the UNDP was Dr Ozonnia Ojielo, a Nigerian who I had met at a human rights organisations’ meeting in 2006. Dr Ozonnia made presentations on two countries, Ghana and Nigeria. He had been involved in setting up the Ghana Peace Architecture, which had since become a model for other countries.

One of the other presenters was Prof Karuti Kanyinga, one of Kenya’s leading scholars on the subject of ethnicity. During tea break, Dr Ozonnia and I began a conversation on what we could do together to further the conversation on cohesion and integration. I told him that NCIC Commissioners had agreed to consult widely on strategy. The other Commissioners were already meeting people relevant to their fields. We floated a few names of people we could consult and agreed to meet in Nairobi as a small think tank. I would invite Prof Karuti and Dr Ozonnia. My fellow Commissioner, Waqo Halakhe and I had attended a conference titled *Managing ethnic diversity* convened by Prof Kimani Njogu a month before. Prof Kimani had recently followed up the conference with a meeting with all NCIC Commissioners seeking partnership. I would invite him too.

Dr Ozonnia suggested Irungu Houghton, a civil leader and Duncan Okello, the then Eastern Africa director of the Society for International Development (SID). I was pleased at the inclusion of Irungu and Duncan. Unknown to Dr Ozonnia, Karuti, Irungu, Duncan and I

had worked together at the EU conference change conference in October 2008 that I mentioned in the last chapter. This team would be instrumental in putting together ideas that would shape quite a lot of thinking at the NCIC.

Before we met, we shared a lot of reading material on ethnicity, cohesion and integration. Our focus was mainly on racial, intra- and inter-ethnic relations. Claude Ake provided us with solid footing in his seminal paper: *The Problem of Ethnicity in Africa*, which situates ethnicity within culture:

If we think of ethnicity less in terms of boundaries and exclusivity and more in terms of a condensation of culture, it will be easier to understand ethnic identity, which remains strong in many parts of Africa despite every attempt to wish it away. History has saddled many Africans with the problem of crystallising a sense of who they are and where they belong socially. Africans are under pressure from the hegemonic homogenisation of Westernisation.

Ake concluded that:

To the question, ‘is there a problem of ethnicity in Africa?’ I am inclined to answer that there is no such problem, that is, in the sense that ethnicity is inherently a problem. We see ethnic conflict too ubiquitously – in ethnic misrepresentations of survival strategies, in emancipatory projects and strategies of power. We confuse our abuse of ethnicity with its inherent abusiveness. Most importantly, we tend to forget that even though ethnicity might be constructed, it is also a living presence, an important part of what many Africans are. Surely, part of what we are is people who must find themselves, most likely in the desperate act of inventing a cultural identity to assert humanity and set ourselves on the path of becoming a going concern. How we are fabricated, cultural identity and all cannot be a problem except in the context of some notion of how we might be. Even then, what can be appropriately problematised is not.¹⁴⁷

Amartya Sen, in turn provided, through the story of Kader Mia, a context from Asia so similar to ours; a context in which belonging to the “wrong” ethnic community could cost a life. He wrote:

The Hindu-Muslim riots that preceded independence also led the way to the partition of the country into India and Pakistan.

The carnage erupted with dramatic suddenness, and it did not spare normally peaceful Bengal. Kader Mia was killed in Dhaka [Bangladesh], then the second city – after Calcutta – of undivided Bengal, which would become, after the partition, the capital of East Pakistan. My father taught at Dhaka University, and we lived in an area called Wari in old Dhaka, not far from the university, in what happened to be a largely Hindu area. Kader Mia was a Muslim, and no other identity was relevant for the vicious Hindu thugs who had pounced on him. In that day of rioting, hundreds of Muslims and Hindus were killed by each other, and this would continue to happen day after day.

In conclusion, Amartya Sen painted a picture of a world of hope, a world that could rise above differences in identity,

“There is a compelling need in the contemporary world to ask questions not only about the economics and politics of globalisation, but also about the values, ethics, and sense of belonging that shape our conception of the global world. In a non-solitarist understanding of human identity, involvement with such issues need not demand that our national allegiances and local loyalties be altogether replaced by a global sense of belonging, to be reflected in the working of a colossal “world state”. In fact, global identity can begin to receive its due without eliminating our other loyalties.”

On this note we decided that we would work towards a Kenyan sense of belonging. What is it we needed to do so that each Kenyan could feel that they had something to protect in the entity called Kenya? The team was committed and the first principle that was agreed on was that the meetings were a contribution to national duty as friends of NCIC – and for Dr Ozonnia, who was Nigerian, a Pan-African duty. None of the participants would, therefore, get payment.

* * *

On the national front, both Kenyans and non-Kenyans frequently expressed general despondency about the prospects of the nation unifying before the next election. British High Commissioner Mr Robert Macaire, for example, said: “The poll violence might return in the 2012 General Elections unless the Government seeks credible means to avert potential flare-ups in Rift Valley and other volatile areas.”

More efforts, he said, should be put into reconciling communities who fought after the 2007 disputed presidential elections.¹⁴⁸

Twenty-six homesteads had been torched in Bokeire village in Bonchari constituency and two people lynched in Homa Bay in a fresh display of ethnic-based violence. These actions were attributed to village vigilantes, who went on a killing spree under the pretext of enforcing the rule of law. Vigilantes were members of volunteer teams of mainly men formed by communities to protect themselves in the absence of State-appointed law enforcement organs.

Vigilantes were a solution to lawlessness. They had come into being as a counter to the several ethnic militia groups all over the country such as Chinkororo, Mungiki, Sungu Sungu and SLDF. Unfortunately, the vigilantes in some cases turned out to be worse than the militias as had happened in the two areas where they had torched and killed suspected “sorcerers”.¹⁴⁹

* * *

Our Friends of NCIC team met over a period of several Sundays with these pressing matters in mind. For example, on 1st February 2010, the police found 28,783 bullets of 9 mm calibre, 353 of 7.6 mm, 1,552 of .22 mm, 500 of .38 mm and 25 of .28 mm calibre in two containers branded with the logo and colours of a local milk factory in Narok town. The police described it as the largest consignment of ammunition and guns found in civilian hands in recent times. The police had also earlier recovered six guns and 100,000 rounds of ammunition at a petrol station within Narok town.

On 13th February 2010, NCIC commissioner Rev. Lawrence Bomett and I attended the Friends of NCIC meeting. Dr Mzalendo Kibunja and Commissioner Halakhe would attend others. This first meeting concretised all our thoughts into practical solutions that would contribute to the cohesion and integration agenda based on the following questions.

1. Can we define Kenyans? Are they identified by any specific quality? How do we dismantle bad ethnic stereotypes?
2. What would bring Kenyans, so ethnically divided together?
3. How do we set up norms? Is it even possible?

4. How can we walk Kenyans towards understanding and living with their multiple identities? That it is fine for instance to be a Luo with a Kikuyu mother and therefore be both and not either of each?
5. How can the country develop a sense of common citizenry, moving from the 'I am my ethnic community mentality to I am a Kenyan citizen?'
6. Is it possible to undo the narratives of hate and exclusion that Kenyans harbour against each other? Does the education system encourage ethnicism?
7. How do we create outward looking Kenyans?
8. How can we demolish the politics of ethnicism in Kenya without making it detrimental to pluralism. How can Kenyans understand that the ethnic agenda has created politicians who the Kenyan public hate but who in essence reflect real Kenyans?
9. Who are the drivers of ethnicism in Kenya?
10. Can we construct narratives around Kenyans' need for each other? Can we build on 'Utu' the Kiswahili version of the Ubuntu philosophy "*Utu ni mtu*" – I am because we are, and because we are, hence I am? How can Kenyans recognise each other's humanity and build interdependence between them?
11. Can we globalise this discussion on cohesion and integration? Pan-Africanise it? East African Communalise it?
12. The Tanzanian model of cohesion was politically engineered from the top. How sustainable is this method and why is it then that ethnic stereotypes still exist so that despite the working of the model, the people from the Chagga community are referred to within Tanzania as the Kikuyu of Tanzania in relation to their business acumen?
13. What is the role of leadership in cohesion and integration? Why are we failing as a nation to progress into modern non-ethnic leadership? How do we address the crisis of citizenship towards meaningful change?
14. How do we ensure that ethnicism is treated with the contempt and condemnation that it deserves?

15. How do we make Kiswahili, as a language, a unifying factor?
16. How do we cure Kenyans of cynicism and convince them that cohesion and integration of all ethnic communities is possible?
17. How can the youth know they are responsible for the cohesion and integration agenda of coming generations?
18. Where is the arena to engage in cohesion and integration initiatives from? Who are the catalysts that we must rally around the cohesion and integration agenda?
19. Does change towards cohesion happen better during violent conflict?? How do we sustain historical change? How do we showcase this change?
20. How do we ensure cohesion and integration headlines that Kenyans and the world will be interested in? How does cohesion become as important as climate change, for example – how do we make Kenyans see how affected they are by not being cohered and integrated?
21. How do we create a Kenyan-owned roadmap with commitment and involvement by Kenyans? Should NCIC be judged by the extent to which Kenyans take ownership of the cohesion agenda? How will NCIC identify the owners and drivers of the message of a Kenya with Kenyans?
22. How do we address economic contradictions and inequalities alongside cohesion and integration?
23. Is it possible to put in a system of positive discrimination – a plan by the state that brings together the Ministries of Education, Agriculture, Health, Justice, and Water to bring on board the marginalised ethnic communities? Can national budgets be analysed from these perspectives?
24. How do we ensure ethnically correct language? Kenyan communities often refer to each other in derogatory terms that are in turn used to dehumanise people and justify violent attacks.

Long and short term issues: Critical threads and issues

In response to the above questions, the team split responses up into short and long-term issues. Cohesion and integration were long-term issues, but the mere fact of it being situated within the KNDR ensured

that NCIC must urgently deal with short-term urgencies that could derail the country before the next scheduled elections. This meant involvement in intense conflict prevention and peace building activities that would then work to fulfil its mandate of ensuring peaceful coexistence. It was, however, crucial that NCIC must not be seen as a punitive Commission in its work against discrimination and hate speech.

The crucial component would begin with ensuring that Kenyans were well informed so as to ensure community ownership of the cohesion and integration agenda. NCIC needed to be present everywhere and address ethnicism and racism in the form within which they presented themselves. The challenge would be to translate the National Cohesion and Integration Act, 2008, into practice, walking hand in hand with the Kenyan people for positive change. We would be successful if NCIC worked to end inequalities and the prejudices, stereotypes and attitudes that sustained them as increasing resources on its own would not work.

Interpretation of its functions as given in the NCI Act 2008 meant transforming state policies and practices and public attitudes and behaviour. NCIC would also be expected to conduct research and ensure policy change.

Lines of actionable enquiry to interpret the functions in the NCI Act, 2008, on long-term issues would need to address the following: The manifestations of ethnicism and racism in the distribution of resources. Institutionalised inequality linked to politics (former President Moi had coined the phrase – *siasa mbaya, maisha mbaya* that translated into bad political choices result in a bad life). This philosophy had been used to deny ethnic communities that did not vote for particular leaders, resources. Education as key to changing attitudes and behaviour. Focus on structural behaviour change – not information, education and communication materials – to cohere and integrate Kenyans. The manifestation of ethnic favouritism in employment as seen through discriminative practice, barriers to training, accessing mechanisms dealing with grievances, and punitive transfers to various parts of the country. Disparities in health facilities as indicated in standard health index reports and identify for instance, what Kenyans die of, and if the causes of disease are linked to inequalities, how to end marginalisation

and Government neglect of various ethnic communities. The administration of justice as related to how fairly Kenyans could be guaranteed fairness and equality of opportunity.

Media and internet

The media and internet users should do the following: Address the presentation of some aspects of culture as primitive. Address with editors, the greater coverage of some ethnic groups and geographical areas than others. Monitor vernacular radio stations for hate speech and work with them to promote cohesion and integration. Work with writers/set up a technical team of content correctness as related to ethnic and race relations. Establish guidelines for all radio broadcasters. Undo violence as an approach to problem solving and promote dialogue. Strive to undo hate narratives by having, for the first time in Kenya, a national conversation on ethnicity and race. Leadership as core – work towards promotion of politics outside of ethnicity. Conduct a current, basic conflict analysis on the country with regard to identity conflicts.

Carry out a series of activities on cohesion and integration such as; assure Kenyans that unlike in the past when people would be arrested for wearing the Kenyan flag, now every Kenyan had a right to do so without fear; work directly with musicians to compose and sing national songs; work with census data to inform policy on affirmative action for marginalised ethnic communities; identify ways to promote national identity through cultural activities; coordinate cohesion and integration initiatives at all levels; identify and engage constantly with political leadership at the highest level, private sector, peace building and human rights civil society; train Community-Based Organisations (CBOs) on early warning and linkages to early response; identify 100 most influential people in Kenya as change champions for peace.

In conceptualising cohesion, the team advised that NCIC was expected to be a small model of what the country was to look like, so the Commissioners would have to be careful not to show a disunited front. Internal cultures that support strong leadership would have to be encouraged. The public attitude to NCIC at the time was ambivalent and needed to change to support the cohesion and integration agenda. Above all, the team agreed that it was up to NCIC to work with the

end of our contract as Commissioners on 8th September 2012 in mind. Constantly, they said, we should ask ourselves, what would NCIC have achieved by that date?

Identifying cohesion and integration solutions

In addition to the long-term issues stated above, we identified some short-term issues that had the potential of dividing the country; the 2010 Constitutional Referendum, the ICC, the findings of the TJRC, IDPs, census results and the General Election. We called these issues process milestones.

Back in the office, I carefully consulted the commissioners we had been attending the meetings with and prepared a comprehensive brief for discussion in the next commission meeting carefully. We worked with the rest of the commissioners on further research on the process milestones. I was passionate in my explanations that if we were to be relevant within our term as commissioners, it was absolutely necessary that we set the agenda for national cohesion based largely on the process milestones. We needed to lead the country and identify agenda-setting strategies.

The Census for instance, had been conducted in August 2009 but the results had not been released. The “tribal coding” had as in previous years, lumped some ethnic groups under others. Technically, the census results are necessary as a planning tool. Politically, the census was a double-edged sword. It represented an opportunity for recognition of minority groups, but could also entrench ethnicism and the politics of numbers. The politics of the communities named as having the most numbers would have an impact on the electoral process as Kenyans would, as has happened in the past, most likely vote on the basis of ethnicity. Politicians, therefore, would bandy around the census figures as ‘proof of ownership’ of votes. This would further marginalise minority groups.

In an editorial on Monday, 11th January 2010, the *Daily Nation* had raised questions on the delayed release of Census results. Headlined “Census results delay highly suspicious,” the editorial had pointed out that: “The circus surrounding the release of the 2009 national census,

which was cancelled for the third time last week, threatens to undermine the credibility of an otherwise noble effort. Although fingers are firmly pointed at politicians for the delays, professionals also shared in the blame for allowing such an extensive undertaking to be reduced to a political contest.¹⁵⁰

The concerns were informed by past experiences and had political implications. As Dr Pius Mutie of the University of Nairobi would later explain at an NCIC workshop on cohesion and integration in the curriculum, controversial issues have always dogged past censuses in Kenya.¹⁵¹ He said some of these “controversial issues included the fact that in 1969, the ‘Kalenjin’ did not exist as a category, whereas in 1979, the ‘Kalenjin’ word was in the census. Similarly, the ‘Suba’ were counted as a distinct group from the Luo. This partly paved way for the Luo to be ‘overtaken’ by the Luhya as Kenya’s second largest group. In 1989, the Kamba were ‘overtaken’ by the Kalenjin as the third most populous group.”

We were also concerned about the stateless people, who had not been counted. This meant that they could not participate in any meaningful political and economic activities. The other concern was on the counting process in Northern Kenya as the nomadic population may have moved in search of pasture during the counting. This concern would become a key point of discussion when the census results were released and the Kenyan Somalis had ‘overtaken’ the Meru and Kisii communities. There were further concerns from those affected by the violence on the state of being internally displaced and traumatised.

Finally, all NCIC Commissioners formally adopted the milestones and we began planning the implementation of the agendas in advance. Due to my enthusiasm, one of my former colleagues nicknamed me “process milestones” and, to date, fondly always asks me what my “current process milestones” are.

The Elders Conference

The Elders’ Conference organised under the auspices of our parent Ministry, MoJNCCA, was held on 20th April 2010. We were still following our plan not to be seen to be in competition with the Elders

sponsored by our parent Ministry. We therefore participated in the preparation of the conference and together with the Ministry bought space in the print media to explain our work to the public. President Mwai Kibaki and Prime Minister Raila Odinga both came to Bomas of Kenya for the Elders' Conference. More than 500 elders had been drawn from all ethnic communities across Kenya.

The NCIC chairman Dr. Mzalendo Kibunjia spoke at the conference, warning politicians against hate speech in the upcoming referendum. Then he walked the audience through the process milestones, and what NCIC intended to do. The hall was dead silent as he spoke, naming the five process milestones that could make or break the country. The media gave us front-page coverage. Alphonse Shiundu writing in the *Daily Nation* said of the process milestones that the NCIC chairman "laid out a five-point cohesion plan to President Kibaki and Prime Minister Raila Odinga".¹⁵² The NCIC set the agenda for the conference. Our process milestones were the most quoted issues in the five days we conferenced at Bomas of Kenya with Kenyan elders.

Strategic plan and communication strategy

The research team of commissioners led us in drafting a strategic plan to interpret our functions as laid out in the NCI Act, 2008 and crafting our identity. For instance, they advertised for artists countrywide to draw up a logo for NCIC. In the Coat of Arms, Kenya holding together is usually symbolised by a shield. Our national anthem says "justice be our peace and defender". The artist we selected as winner had drawn a shield that was broken in half, symbolising the two Kenyas that had existed during the PEV coloured red, drenched in blood. He drew the Kenyan flag as a rope, which tied up the two pieces of the shield together. We were excited with the result. This was what NCIC was supposed to do. This became our logo.

Without sufficient Government funding we began actively seeking donors such as the British's Department for International Development (DFID), German Development Agency (GTZ), United States Agency for International Development (USAID) and UNDP.

We drew up a vision: "A peaceful, united, harmonious and integrated

society” and mission to “facilitate and promote a Kenyan society whose values are harmonious and non-discriminatory for peaceful co-existence and integration”. We identified six critical success factors to be judged by, as follows: Our organisational structure is simple and highly efficient, Our management of resources is robust, We are competent and ethical, We use credible data and research findings, We partner to build a stronger Kenya, We deliver our mandate without fear or favour.

We then worked on a communication strategy with the advice of Rosemary Okello. Rosemary was also the secretary to the Kenya Editors’ Guild. One of the strategies used to test the relevance of the six critical success factors was to share with and seek the opinions of people not working with NCIC such as newspaper correspondents brought together by Rosemary; we got useful feedback from them that helped us to refine and develop appropriate communication strategy.

In the drafting of our final strategic plan, I was part of the team that conducted grassroots interviews in Nairobi and Isiolo.

One of the defining conversations during the visit to Isiolo was with a DC who was visiting during dinner at Bomen Hotel. He told us that while on a security patrol during the Shifta war, he came across a group of women gathering firewood near Habaswein. When the women saw the men in uniform, they instinctively dropped their firewood and knelt down saying, “rape us but do not kill us”.

“Government”, he told us, “is the enemy of the North. Not resources, not pasture, not politics. If NCIC can find a way of working with the North, including sensitising the government of development needs of the North without resorting to bullying the people, then you will bring the North back to Kenya. Find ways to tell the government to build roads, provide piped water and electricity to the North”. The official said the incident changed his attitude about the North; he imagined his mother in the same position, expecting nothing from Government but intimidation.

All this took a lot of time, and it was only on 12th March 2011, that NCIC launched the strategic plan at the Kenyatta International Convention Centre (KICC). The chief guest was the Minister for Justice, National Cohesion and Constitutional Affairs, Mutula Kilonzo and the PS, Amina Mohammed. I was the master of ceremonies.

Chapter 11

Kibaki, Raila Fusion: Our First Cohesion Test

Resentment is like drinking poison and then hoping it will kill your enemies.

– Nelson Mandela

In the period leading up to February 2010, the second anniversary of the signing of the Kofi Annan-led Peace Accord; Kenya was at a crossroads as a nation. We had been in office as NCIC Commissioners from 8th September 2009, almost six months into our three-year term.

However, the country was not moving in the direction of becoming *cohesive* largely because the leaders would not. February 2010 was a particularly tense time for the country as President Mwai Kibaki and Prime Minister Raila Odinga had fallen out yet again, and in public. The country, still hurting and wounded from the violence of 2007-2008, with perpetrators living side by side with victims was on edge. The tension between the two had been apparent in the recent past.

The Prime Minister had suspended Prof Sam Onger, the Minister for Education and William Ruto, the Minister for Agriculture, following alleged corruption scandals in their respective ministries. Prof Onger was from the President's side of the coalition, PNU, while Mr Ruto was from the Prime Minister's side, ODM. The Prime Minister had said he was quoting a section of the National Accord, which gave him authority to suspend the ministers"¹⁵³.

Eight senior government officials, including permanent secretaries and parastatal heads, had also been suspended by President Kibaki, including Permanent Secretaries Dr Romano Kiome (Agriculture), Mr Ali Mohammed (Special Programmes) Prof Karega Mutahi (Education) and Dr Mohammed Isahakia (Prime Minister's Office). Prime Minister's

chief of staff Mr Caroli Omondi and three senior managers at the National Cereals and Produce Board were also suspended. Prof Ongeru promptly announced that he was not going anywhere as he had not heard from the appointing authority, by whom he meant the President. Mr Ruto took the same position.

Tensions grew. The National Accord that had set up the coalition government had identified the Prime Minister as the supervisor and coordinator of all ministries, and as an equal partner in the government. There were many legal interpretations given to what exactly *supervising* and *coordinating* meant. In its preamble, the National Accord and Reconciliation Act stated that its objectives included guaranteeing *real power sharing* and the need to maintain a spirit of *consultation* between the principals in all matters of governance. The problem was that the Act and consequent amendments to the constitution did not translate this spirit into the letter of the law.¹⁵⁴ With their refusal to budge, the ministers were communicating that they did not report to the Prime Minister.¹⁵⁵

The country waited with bated breath to see who would blink first. The wait was not to be for long, as within hours, President Kibaki overturned the suspension of the two ministers. Tension in the country hit a higher notch when, as is usual in Kenya, ethnic communities came out in support of ‘their own’. There were street protests by the Kalenjin ethnic community in Eldoret, Kapsabet and Nandi Hills against Ruto’s suspension, and demonstrators “caused a huge traffic snarl up as they chanted anti-Raila slogans” and temporarily blocked the highway to Uganda.¹⁵⁶

Prof Ongeru was received by cheering crowds from his ethnic Kisii community, to whom he gave a “fiery speech of ethnic populism”¹⁵⁷ This was not unique in the Kenyan context. Andrew Morton, President Daniel arap Moi’s biographer, wrote: “When in 1996, Moi ordered the removal of the head of the Mombasa port, Simon Mkalla, because of an alleged car import scam, members of Mkalla’s coastal tribe rioted in the streets in protest at the humbling of one of their leaders.”¹⁵⁸

“Speaking in his mother tongue at a rally in Kisii, Prof Ongeru admitted altering figures while disbursing school infrastructure money. “The only thing I can be accused of is that when I joined the Ministry,

I did my calculations and found the infrastructure money flowing to Nyanza between 2003 and 2008 was Ksh. 1,123 billion. Of that Kisii got a mere Ksh. 188 million.” If we were talking about equity, fairness and access ... I had seen the calculations were wrong and I had to correct them.”

Although the Minister appeared before the Parliamentary Committee on Education saying people read mischief in his words, the teachers’ unions condemned him, with the Kenya Union of Post-Primary Education Teachers (KUPPET) Secretary General Njeru Kanyamba saying “it was unfortunate that those with responsibilities were using them to benefit their *tribesmen*.” The Kenya National Union of Teachers (KNUT) Vice Chairman Wilson Sossion also accused Prof Onger of “engaging in tribal politics. We believe resources should not be concentrated in one region because a Minister comes from there,” said Sossion.¹⁵⁹

President Kibaki termed their suspension illegal, and said the Prime Minister had no power to sack ministers. Then the two principals began throwing dirt into each other’s eyes. The Prime Minister said he had consulted the President before suspending the ministers. The President said he had not been consulted.¹⁶⁰ The question on everyone’s mind was, were these two men going to lead us back to war? The tension in the country was so thick that a blunt knife could have sliced through it. Then matters became more complicated when the Prime Minister said ODM had decided to call Kofi Annan to come back and take the two parties back to the negotiating table.

* * *

Meanwhile, Prime Minister Raila Odinga and Vice President Kalonzo Musyoka had also been engaged in what seemed to be never ending protocol disagreements. The key issue the two competed over was their pecking order: which of them came first in leadership after the President? The Kofi Annan process had created the Prime Minister’s position, but President Kibaki had appointed Kalonzo Musyoka the Vice President, a move that had incensed the ODM side. The Vice President and the Prime Minister had previously belonged to one party, ODM, but they had fallen out and each now headed a faction of the original party.

Their “protocol wars”, as the media referred to them, spilled over to everywhere they met, including Parliament. For instance, on 10th December 2008, MPs allied to the Vice President had pushed for an amendment to have him be given 15 minutes to respond to questions from the members. This was because the Prime Minister had been allocated a weekly slot to address Parliament. In the Standing Orders adopted by a committee of the whole house chaired by Speaker Kenneth Marende, the Prime Minister was allocated 45 minutes in which to deliver statements and to respond to questions from MPs, every Wednesday afternoon. The two were clearly in competition as to who really represented government in Parliament, with the Vice President supported by MPs allied to President Kibaki’s PNU, while those allied to Raila’s ODM opposed it.

These wars were not to stop. On 28th April 2009 the Speaker of the National Assembly ruled that the Coalition Government needed to appoint the Leader of Government Business and Chair of the House Business Committee. It was not a surprise that the competition continued, with the Speaker receiving from the Executive two letters of designation bearing two different names, appointing each to the position of Leader of Government and Chair of the House Business Committee.

The president had designated Vice President Kalonzo Musyoka and the Prime Minister had nominated himself. In his ruling on the matter, the Speaker reaffirmed that according to the Standing Orders, any minister can serve as Leader of Government Business and the appointment of the Leader of Government Business is the prerogative of the Executive.¹⁶¹ The Speaker then appointed himself as the Leader of Government Business, in a move the media termed Solomonic in its wisdom. This push and shove characterised the engagements the Prime Minister and Vice President were involved in for much of the coalition’s early life.

With all these quarrels at the highest level, the country was on edge and with victims and perpetrators of the PEV still living side by side, a spark could trigger violence again. So NCIC decided to broker peace between the three leaders. We decided to see both Principals, separately

and then together. We sought appointments with the Prime Minister first and then the President, both of which were granted.

Meeting with the Prime Minister

The meeting with the Prime Minister was critical for two reasons. One, seek his intervention to get funding and two, help to end tension between him and the President and seek his assurance in calming tensions in the country.

The meeting with the Prime Minister took place on 8th February 2010. Minister Mutula Kilonzo was also there with us. The Vice Chairperson Mary Onyango spoke first, handing over to our chairman Dr Mzalendo Kibunjia who asked the Prime Minister to join us for a public event on 28th February 2010 that would bring him together with President Kibaki. The chairman then asked me to expound on the meeting. I said that NCIC was seeking role models for anti-ethnic action and leadership and had identified him and President Kibaki as the critical players who could discontinue the cycle of ethnic hatred among communities. Further, we wanted his office to help NCIC make visible the work of communities who were trying to counteract negative ethnic practices with positive agendas. Their mere joint public appearance with President Kibaki, I explained, would do the country a lot of good and create the space to begin a national conversation.

The PM responded at length. “Your work as NCIC is well cut out,” he said. “There is no contradiction between the office of the Ombudsman, the TJRC and NCIC. The TJRC will deal with the past, while the NCIC will deal with the here and now,” he added. “In fact,” he said, “the future of Kenya is in your hands”. He said that 28th February was a good choice as it marked a new beginning and that he welcomed the NCIC initiative to bring the Principals together. “I need to emphasise to you where we have come from so that you can know where to take us,” he said. The room was silent as he spoke, his speech dramatised by the occasional tear he dabbed from the corners of his eye with a white handkerchief. He had surgery on the eye.

“The nationalist movement that fought for the independence of this country”, he said, “brought together members of the different

communities in Kenya. These people fought for *uhuru* (freedom) together. The nationalist movement was like an African homestead with several huts, where upon a distress call, many people emerge from different huts to respond, all of them in one compound, different huts but united by a cause. There is a lot of literature on how and why this cause was important that I would imagine you are already familiar with."

"Kenya and Tanzania got independence at the same time. The British had ruled Tanzania, previously Tanganyika, before the Germans took over. Tanzania has more ethnic communities than Kenya, but they do not have the Kenyan ethnic problems. Julius Nyerere, Tanzania's first president ensured that Tanzanians put their country before ethnic community. Frequently, Nyerere would say that ethnicism is a disease of the elite, who compete for resources."

"In Kenya," he continued, "we see high-ranking people arrested for wrongdoing falling back to their community for support, saying 'my arrest means my ethnic community is a target, we are being persecuted'. I cannot promise that this mentality will end with Raila, now that I am the Prime Minister. I have sacrificed a lot for this country, serving time in prison, being detained without trial for my political beliefs that had nothing to do with my community. The political elite after independence surrounded themselves with people whose key agenda was that "it was their turn to eat". When Moi took over, ushering in the Nyayo era, he replaced the elite with his own who continued to carry out the eating exercise."

"So much of what you are expected to do is to promote equal opportunities. NCIC needs to tell us how unequal the Kenyan society is, whether campaigns against inequality are misplaced, how this happened, so that the country can move on. Sometimes I am jealous of the Kenyan Asians who originally came in from India. The Kenyan Indian Community originally came into the country as technicians and accountants. They converted into shopkeepers, developed banks such as the Bank of India. They are very organised and hardworking."

"When the *Mzungu* left after independence, the Asians had the capital to buy out many of the businesses, as the Africans under the colonial regime, then referred to by the *Mzungu* as the natives, were not

even allowed to open a bank account much more have access to bank credit. If the colonialists found a native with 100 Kenyan Shillings he was arrested. The native later took over from the *Mzungu* in leadership and also the Asian businesses in a bid to Africanise. NCIC needs to question how this taking over process was done and whether it was fair. When we asked *Mzungu* to bring in *Mwananchi*, was the process fair, was it equal? Were the opportunities that existed shared equitably?"

"There is a huge part of the country that has been neglected by subsequent Governments, from the colonialists to the present. The railway line defines the map of Kenya. It is almost as if a ruler was placed on Kenya, dividing the country into two, with the then Northern Frontier District defined as useless. This has meant that in different parts of Kenya, there are different styles to define opportunities for people in education, opportunities in business, opportunities in employment in public office and the disciplined forces. No country can take care of its economy unless it solves this issue. A lot of energy is needed and Kenyans need a sense of belonging in order to take off."

"Kenyans show their sense of non-belonging in many ways. For instance, where did Kenyans get their attitude of "*pora mali ya umma*" (steal public resources) that is so prevalent? We need a country that manages ethnic differences so that it can emphasise unity in diversity. Malaysia has done it. It is a country that has travelled many strides in the last twenty-five years. Singapore moved from the third to the first world and left Kenya in the third. There is a lot Kenya can learn from Germany, where I studied. Germany initially consisted of several ethnic groups of several nations. But Otto von Bismarck united the South German with the North German confederation into a German empire."

"Napoleon Bonaparte had a field day running over the small divided nations. It took Otto von Bismarck's leadership to unite them against the British and the French. Bismarck did not have an easy time uniting the Germans; he exerted an iron fist. He told the Germans to either work or get disciplined. He ensured that they became one people speaking one language. The work ethic in Germany is a Teutonic discipline, resulting in such perfection that Germans look down on others as not having the excellence and perfectionism that they do in,

for example, producing the Mercedes Benz. Germans no longer look at one another with suspicion.”

“I always wonder about Kenya, especially the Kenya where people ran amok with machetes. What kind of hatred drives someone to kill anyone? This is your challenge as NCIC. NCIC must get the confidence of the people in a business-like manner. I do not expect you to represent your ethnic community as an NCIC commissioner. All Kenyans must feel comfortable that you are acting for all of us; this includes people who come from small, minority or big ethnic communities. We require action plans from you, on what you are planning to do. If NCIC wants anything done by government, just tell us, my PS and Ministry are here for you. The full support from government is assured to make NCIC succeed. The government is determined that the provisions of the Accord are implemented to the letter.”

He concluded his long response by saying: “I will join you on 28th February 2010 on whatever programme you have for us.” He also charged us to monitor the hate speech being peddled through vernacular radio and asked us to find ways of managing them.

“However,” the Prime Minister said, “even as you deal with the issues of bringing the Principals together, NCIC must deal with hate speech. I have serious concerns about radio stations that broadcast in vernacular. If Rwanda had dealt with hate speech on radio, it probably would not have got to the point of genocide. Find a way of dealing with hate speech on vernacular radio; the responsibility has to be placed on the media owners of vernacular radios to stop hate speech.”

We debriefed after the meeting with the PM and decided on several causes of action, one of which was to work with vernacular radio stations and train them on the implications of hate speech. Beyond the hate, vernacular stations played a key educative role on culture. They were able to reach the illiterate and literate. The CoE was using vernacular radio to educate Kenyans on the Draft Constitution. Calling for a ban on all of them at this point would create a gap that we could not fill. IREC had said of the vernacular stations:

“The solution to hate speech by the FM radio stations should, in our view, be found elsewhere not by banning them. Most blame was directed at those media serving the big ethnic groups. These

are Kameme FM and Inooro FM for the Kikuyu, Ramogi FM and Lake Victoria FM for the Luo, Kass FM and Chamgei FM for the Kalenjin, Muuga FM for the Embu and Meru, Mulembe FM, West FM and Chettambe FM for the Luhya community, Musyi FM and Mbaito FM for the Akamba and Egesa FM for the Gusii.

Major concerns were directed at their popular talks shows such as “*Baraza*” (informal assembly) for Ramogi FM, “*Just say it*”, for Lake Victoria FM, “*Hagara*” (sharpen) for Inooro FM and “*Arabuka*” (Wake, up) for Kameme FM. Even the titles of the programmes allow one to sense that the message is bound to be divisive. These programmes are aired raw and are moderated by persons who have no training and skills in managing such shows, some having been recruited merely because they are entertaining or attractive.

The solution is therefore to have trained personnel manage these shows and control the contents of the message broadcast for public consumption. Training in conflict reporting and moderation is likewise crucial.”¹⁶²

After the meeting with the Prime Minister, NCIC had a confidential meeting with the President Mwai Kibaki. President Kibaki also explained his aspirations of what he expected NCIC to achieve key of which was a united nation. He pledged to do his part to support NCIC. He had asked both the Prime Minister Raila Odinga and Vice President Kalonzo Musyoka to join the meeting to contribute to the agenda of the joint meeting of the 28th February 2010. *All three leaders then sat with NCIC to draw up a programme for the 28th.*

Following further discussions, they had jointly decided on a venue, the Catholic Holy Family Basilica, as 28th February was a Sunday. The tension that the three exhibited in public was not there in their private meetings, and indeed at the Harambee House meeting, NCIC had been surprised to see the camaraderie as the President teased the Prime Minister and Vice President on who among them would be caught by NCIC promoting hate speech. (In the period leading up to the meeting, NCIC had been in the news quite frequently warning politicians against hate speech, which the three leaders commended).

An agreement of a public meeting that even included discussion of the need for a handshake, between the three on 28th February 2010 was formalised. The handshake was very important. The President and Prime Minister had not been seen shaking hands in public since 28th February 2008 and the country was very tense.

The Basilica and a Message of Hope for Kenyans

The morning of 28th February 2010 found five NCIC Commissioners, including myself, at the Holy Family Basilica. We were in deep conversation with the Archbishop of Nairobi Diocese John Cardinal Njue, Bishop Phillip Sulumeti and Father Vincent Wambugu on thoughts and scripts for the day's sermon.

The Principals, President Mwai Kibaki and Prime Minister Raila Odinga, were to celebrate mass that morning – together.

This was to be a rare public appearance in which they spoke to the nation together, one of the very few since Kofi Annan brokered the peace that saw them shake hands in public on 28th February 2008. It would be the first time in which they jointly appealed for the country to be calm. The President, the Prime Minister and the Vice President were coming for the service because NCIC had asked them to. Kofi Annan needed not to come back to broker a truce because NCIC had done that. NCIC had met each of them, initially separately and later together. NCIC's agenda had been simple: reduce tension in the country by getting the Principals to speak to the nation together on this significant day, commit to work together and shake hands in public.

We had recalled that Kenyans, experiencing their first civil strife, had by the end of February 2008, become completely exhausted by the violence. Then on 28th February 2008, Kofi Annan uttered the words that Kenyans had been waiting for: "We have a deal". Then President Kibaki and Mr Odinga shook hands. Never in Kenya's history had a handshake carried so much weight. The handshake brought an end to the violence that had ravaged the country since the election results had been announced on 30th December 2007.

The handshake brought Kenyans to the streets, not for violent demonstrations that had become the norm in January and February,

but in happiness. Jubilant celebrations rocked the country, with text messages exchanged as Kenyans wished each other 'a Happy New Year'... on 28th February. Some of the children born that day were named Kofi Annan. Artists did roaring business painting poster pictures of a wise-looking Kofi Annan on *matatus*.

Now two years later, we were trying to capture the spirit of the handshake into a sermon to be delivered by the Cardinal and in a commentary by Bishop Phillip Sulumeti. Bishop Sulumeti was known for his contribution to Kenya's long constitutional review process. During the constitutional conference held at the Bomas of Kenya, one of the key steps in Kenya's two-decade attempt to write a new constitution, he had been the chair of an important team tasked to broker a consensus between groups of conflicting delegates, who had disagreed on a number of issues. We hoped that the bishops would speak the truth to those in power and tell the Principals that the country needed peace above everything else.

Our presence in the church was also a test for the church leaders. After the PEV that had shaken the country, Kofi Annan came onto the scene to mediate; there was no acceptable and trusted Kenyan with credibility to mediate the conflict. Friends and neighbours had turned against each other; no one trusted the other.

Considering how fragmented the country was, it did not come as a shock to Kenyans when more than 1,300 church leaders, led by the NCKK Secretary General, Canon Peter Karanja, admitted to having failed the flock during the hour of need. In a meeting attended by among others retired President Moi and Speaker of the National Assembly Kenneth Marende, church leaders had given testimonies that they participated in '*blessing warriors to engage in the violence, invited politicians to their churches where they used the pulpit to disseminate hate messages that incited people against members of the various communities.*'

In addition to vowing not to fail the country in its hour of need again, they admitted that the rift had begun when they had taken sides in the 2005 national referendum on the proposed new constitution. The church leaders bought space in newspapers to declare;

'we own up to taking partisan positions on national issues, elevating our ethnic identities above our Christian identity,

direct involvement in party politics and participating in post-election violence which was (...) made more ominous by the deteriorating national values, sinful political strategies and failure to faithfully stand for biblical values and principles. We ask God to forgive us and to renew and empower our witness to His grace.”¹⁶³

So on 28th February 2010, all of us, the NCIC commissioners, the bishops and the principals, were on trial. Could Kenyans put trust in the principals and believe in their ability to bring all of us together? Beyond contributing to the sermon, the bishops suggested something else. “Your work is so important,” said Cardinal Njue, “that we must consecrate the National Cohesion and Integration Act 2008 before God, in church and witnessed by the congregation.” Mary Onyango, our NCIC Vice Chair, had a copy of the Act in her handbag. She always carried it with her.

We read sections of the National Cohesion and Integration Act 2008 for the men in cream tunics and small pink skull cups, outlining our mandate of promoting peaceful coexistence among Kenyans. The clergy weaved the message in their sermon. Sitting on the edge of the gilded seats, we were anxious that the bishops should not miss the key message we had given them: “We want you to tell the principals, President Mwai Kibaki and Prime Minister Raila Odinga, that they cannot afford to frighten the country with public quarrels anymore. They are literally holding the country by the throat, and the country needs to breathe. Tell them they must get along, or at least be seen to do that.”

NCIC had passed this message directly to President Kibaki, Prime Minister Raila Odinga and Vice President Kalonzo Musyoka in the earlier meeting, a week before at the President’s Harambee House office. But the bishops had the moral authority to tell them and deliver the same message more forcefully. Our agenda for the leaders was simple. On that Sunday 28th February NCIC wanted them to speak to Kenyans together and tell them that we had no choice but to co-exist peacefully. The suggestion for a truce had been well received by the three leaders, information we conveyed to the bishops.

We finished with the bishops just in time to get to the front of the church and receive the President and the Prime Minister. We were

coordinating with their aides to ensure they arrived at exactly the same time, so that neither waited for the other, which might have created new grounds for tension. We sat on the front rows with Cabinet ministers and their spouses, and the event was covered live on national television. The solemnity of the occasion and the aroma of incense was a constant reminder that I was in church. But this did not stop me from scribbling everything that was happening in my little green notebook. We were initially quite bothered because the two principals sat in the same front row, but on different benches. In whispers, we wondered whether it would be in order to ask them to sit next to each other, but then we decided not to push it. Being in the same church and in public was good enough, we agreed.

The bishops began the mass by praying for the consecration of the National Cohesion and Integration Act, 2008. Bishop Sulumeti had set the pace by introducing the topic of cohesion and integration. He said that Kenyans did not have an “either/or” option for national unity. It was imperative that the country was on the same page on cohesion as an immediate priority. Cardinal Njue then set the agenda with a no-holds-barred sermon. Delivered gently but firmly, he said exactly what NCIC felt needed to be said. “Kenyans,” he started, “come from different ethnic backgrounds, and there should be no apology for having an identity different from that of others. The differences between us are our strength, as no community is self-sufficient; we all need each other.” The Cardinal said he was “appealing to the principals and to Kenyans to recognise the wisdom of St. Augustine – to enter into yourself and discover how great you are. Cardinal Njue then turned to the national anthem. “The words of the national anthem form a powerful prayer,” he told the congregation, “and its words are to be reflected on deeply. For those in leadership this reflection needs to happen every day.”

Speaking directly to the three leaders, he asked them to consider what legacy they would be leaving behind – cohesion or division. He urged the congregation to focus on what needed to be done. Some of the clauses in the Draft Constitution that the country was debating as part of the Kofi Annan reforms were already being identified as contentious by the church and the Cardinal asked Kenyans to ensure

that the country made the right choices. He ended the sermon with a prayer for the principals.

The NCIC chairman Dr Mzalendo Kibunjia spoke next. Earlier on, as we planned for the principals, we had wondered how our chair would address the protocol issues. He was expected to invite the next speaker when he was done. Should he invite the Vice President or the Prime Minister, we wondered? Whoever he invited would be the one NCIC considered as the junior. Of all the decisions we were to make that morning this one proved to be the most difficult. If we messed up here, how would we manage the fall out? We decided that the chairman should start with the Vice President. So, when shortly after our chairman spoke on the order in which he would invite the dignitaries, the Vice President walked out without speaking, we feared for the worst. But we were relieved later to get his message that he had to go for another function in his village and actually saw him on television in the village.

The Prime Minister spoke next, first of the ideals of the Kenyan nation at independence. Walking the congregation down memory lane, he talked of the aspirations of Kenyans in 1963. Kenya was only made possible as a nation through the unity of all the ethnic communities. He said that the country had achieved much, but all that stood to be lost if the country repeated the 2008 violence. The country had much to look forward to, but there was a need to remain sober in our approaches as we sought a lasting peace. He pointed out that the country had a Draft Constitution to be discussed and he urged the civil society, intellectuals, religious organisations and others not to provide the rational or moral justification for violence.

He also expressed commitment to ensuring that the Kofi Annan led Accord was implemented, and thanked NCIC for what he referred to as “the work of bringing all of us together here on this day”. He asked Kenyans to reach out to each other, and ensure that the day was celebrated with thanksgiving for what the country had achieved so far. He wished the President and Kenyans well, and then invited the President to speak.

The President began by saying how grateful he was that the country had witnessed peace in the past two years since the signing

of the Accord. He noted that the history of how the Accord came about had not been written and that needed to be done. In an almost conspiratorial tone, he revealed that as the negotiations went on at Serena Hotel, he and Raila Odinga met and asked each other, "Where is the country going to?" Then we agreed, "Let us build one nation. It was an incredible decision. We found we were thinking the same and we said let us build the country for the *wananchi*. The spirit of Kenya must live on. This spirit must not get wasted in temporary quarrels. We shall build this country together."

The President then asked the NCIC Commissioners to stand up. He thanked us for reminding Kenyans about the importance of 28th February as a day of thanksgiving for peace and for inviting him and the Prime Minister to come together. He then asked the congregation to clap for us. After we sat down, he continued: "Kenya is a prosperous country. Those of us who were involved in creating this country are happy that it is prosperous and will continue to be so. All genuine truthful Kenyans will want such a Kenya. Let us all seek what is great for us. I would like to plead with you, think about it, it is the right thing. Do not be selfish, think of Kenya. You cannot be happy if everyone else is miserable. Let us continue with the spirit."

The President turned to the bishops and thanked them "for the good words". He said that he was praying for them that God gives them strength, as well as all the others from various denominations. On the Draft Constitution, he said Parliament would provide guidance. He then turned to the Prime Minister and said: "I wish you, Raila, and your wife a prosperous life as we have a great responsibility to bring about a better country."

When the mass was over, the President and Prime Minister shook hands to prolonged clapping and a standing ovation from the congregation. Outside the church, everyone was milling around waiting for the next step. But we had forgotten a crucial aspect. Sharing a meal is a key component of peace building, yet we had forgotten to arrange for lunch, over which the principals could exchange pleasantries. We had done our best though, and only briefly did we regret the lunch omission. After the mass, Kenyans missed the glee of the 28th February 2008 handshake, but the tension came down. Since that day, the two

principals appeared together in public on several occasions. William Ruto and Sam Ongeru stayed put in office.

“*Kibaki, Raila united as Accord day marked*” ran the front-page headline of the *Daily Nation* newspaper reporting the historic event. It was the main story in all the media, which termed it a welcome relief for a country exhausted with quarrels. The *Daily Nation* wrote:

“Calls for peace, reconciliation and national healing dominated yesterday’s prayers to commemorate two years since the National Accord was signed. President Kibaki and Prime Minister Raila Odinga used the occasion to calm fears of the collapse of the coalition and repair some of the damage caused by recent bickering. The two attended a service at the Holy Family Basilica.

Speaking to the congregation, President Kibaki described the signing of the Accord as an “incredible decision, which was badly needed by the country at the time”. Mr Odinga, quoting from the National Anthem, said there was no way the country would have plenty within its borders unless Kenyans remained united and peaceful. We can achieve a lot when we are united, he said. We should learn to shun our tribal affiliations and regard ourselves as one.¹⁶⁴

In addition to the media coverage, NCIC paid for space in all the country’s papers that carried the message (Annex 3). This message, that we specifically drafted for the principals’ signature remained to the end of their terms, one of only two public documents that they signed jointly. The other was the agreement to support the International Criminal Court (ICC), which unknown to us then would become the defining agenda for the country’s 2013 elections and redefine ethnic configuration.

Meeting with Muthaura and other Permanent Secretaries

On 10th March 2010, all NCIC commissioners met the Head of Civil Service and Secretary to the Cabinet, Francis Muthaura and all the permanent secretaries. We outlined our thoughts on national cohesion and integration and asked the permanent secretaries to give us feedback on what else we needed to do. Mr Muthaura, who was chairing, invited

the PS in the MoJNCCA, Amina Mohammed to set off the discussion. Ms Amina listed the initiatives that were happening with regard to implementing the KNDR Act, saying NCIC was one of the most important institutions the country had ever created.

Mr Muthaura said NCIC needed to approach the sensitive ethnic matters bedevilling the country soberly and professionally. NCIC needed to share its strategic plan with his office and all permanent secretaries for support. NCIC needed to study countries that had gone through difficult pasts with regard to ethnic and racial concerns such as Malaysia, Singapore and the US. These countries had important structural policies separate from laws to manage identity conflicts.

On our legal mandate on hate speech, Mr Muthaura advised that NCIC must be seen to investigate successfully and impartially for a person to be taken to court. The permanent secretaries would play a lead role in fighting ethnicism. He concluded by turning to the Permanent secretaries around the table. He then referred to a list that the PS in charge of the Directorate of Personnel Management (DPM), Mr Titus Ndambuki, had been asked to give to Parliament that asked for a list of the breakdown of ethnic communities in the civil service. He would give the list to NCIC to assist the PSses to create ethnic balance in their ministries. He further advised NCIC to network and specifically get support from civil society, women's groups and the media.

The PS for East Africa Community, Mr David Nalo spoke next. I had known Mr Nalo when he was the PS in charge of Planning, when we worked with him on integrating human rights approaches to development. Mr Nalo advised NCIC to address various forms of discrimination and work on the long-term agenda of uniting Kenyans. Mr Nalo unfortunately passed away a few years later. A PS in the Office of the President, Mr Sam Mwale, asked the NCIC to deal with the question of ethnicism conclusively.

Prof James Ole Kiyapi, PS Education, who would later contest for the presidency, said there was a perception in the public domain that NCIC was just another commission and risked losing out if it did not execute its mandate properly. He said that NCIC should work with PS Ndambuki to reorganise transfers to ensure that there was ethnic balance within all ministries. PS Caleb Orege asked NCIC to address

the education quota policy that had balkanised Kenyan children.

Speaking next, Principal Administrative Secretary Mutua Kilaka from Treasury said that NCIC must focus on education without forgetting the teachers, who were frequently left out of such initiatives as all focus was placed on the children. He also emphasised the need for the Constitution to emphasise the oneness of the Kenyan people. PS Ludeki Chweya, who had taught me at the University of Nairobi, asked NCIC to identify the drivers of ethnic intolerance and segregation and provide suggestions of how to deal with them. PS Prof James Nyikal of Health and Sanitation asked NCIC to formulate proposals on affirmative action and resource allocation to end years of marginalisation of some communities. PS for Defence Nancy Kirui asked NCIC to address universities ethnic divisions. University vice chancellors and chancellors should not come from the same community, she said.

Mr Muthaura pointed out that NCIC should also address the role of radio stations that broadcast in vernacular in inciting ethnic communities against each other. He said NCIC should sponsor television and radio programmes to address national cohesion and integration. NCIC needed to take the Members of Parliament for a retreat to discuss ethnicism. He also requested that NCIC consolidates all provisions in the Harmonised Draft Constitution that would bring contention and get them discussed in the open early enough before the country took sides ethnically. Lands PS Dorothy Angote said national schools that brought students from all over the country should be expanded. Transport PS Cyrus Njiru ended the meeting by asking NCIC to support the idea of pluralistic societies and guard against lumping communities together even if they shared a common heritage.

As Mr Muthaura brought the meeting to a close, many hands were still up. This had turned out to be a most useful and practical meeting and I wished we had more time to engage with the Permanent Secretaries as a group. After the meeting, in a tremendous show of goodwill, Mr Muthaura wrote a circular to the Permanent Secretaries in which he demanded ethnic balancing. There were responses for instance from the Kenya Revenue Authority (KRA). This directive earned him praise

in the *Daily Nation's* Tuesday, 16th March 2010 editorial that argued for merit and ethnic balance in public service.

With everything falling into place, I went to Addis Ababa in May 2010 to make a presentation at a Horn of Africa and East African regional consultation on diversity in political participation and representation. My speech, especially on the strides we were making with Mr Muthaura was very well received.

On 18th June 2010, Mr Muthaura, speaking at a workshop on strategies to fight and eliminate corruption in the public service at the Kenya Institute of Administration (KIA), now Kenya School of Government (KSG), in Nairobi warned that the government would sack heads of State Corporations who filled most of the jobs with members of their ethnic group.

“We are going to get you out of the job just because of that. We will see your line up and we will sack you. This is a warning. Putting cronies in strategic positions in accounting, human resources and procurement departments meant there would be no checks and balances and was a recipe for corruption.” The problem, he said, was more pronounced in State corporations than in ministries. “Even when top officers are changed, the story of tribalism and cronies does not change. The new top officers come in with a promise to remove some officers, but they bring in their cronies.”¹⁶⁵

PART IV:
IN THE TRENCHES: PROCESS
MILESTONES



Chapter 12

Hate Speech: Receiving Complaints and Memoranda

The forces that unite us are intrinsic and greater than the superimposed influences that keep us apart.

– Kwame Nkrumah

At the NCIC, we were already receiving complaints from individuals on ethnic discrimination led by the Commissioners in the Complaints team. The Somali community had been the first to present its grievances as a group. On 22nd January 2010, a delegation of business and political leaders from the Somali community came to the NCIC to lodge a complaint. They were – they told us – representatives of the Eastleigh business community and the Somali leaders’ forum. They were all men. The complaint’s origin dated back to 24th December 2009, when a radical Jamaican Islamic preacher Sheikh Abdullah al-Faisal had come to Kenya with a message of religious extremism. He had been to Tanzania, Nigeria, Angola, Mozambique, Swaziland and Malawi before coming to Kenya. Al Faisal had previously served four years in a United Kingdom prison after being convicted for calling for the murder of Jews and Hindus.

The Kenya government had spent more than Ksh. 40 million (US\$436,000) to deport Al Faisal by chartering a plane as commercial airlines declined to transport him and various countries denied him access. The Kenyan immigration officers who had allowed him into the country had been suspended pending investigations.¹⁶⁶ The government banned a demonstration in his support outside one of the biggest mosques in Nairobi, the Jamia Mosque. Angry Muslim youth demonstrated nevertheless, carrying a black flag with Arabic type writings – that was the first time many of us saw the Al-Shabaab flag. The government reacted

with fury, violently breaking up the demonstration and conducting a swoop that targeted primarily members of the Somali community, arresting hundreds, including – allegedly – MPs from Somalia. Two Muslim youths died in the fracas and several more were injured.

Representatives of the Somali community had come to complain to us about the ethnic profiling. The complaint they brought was also featured in the newspapers they had bought space in. They said that they realised that the government had the responsibility to take action to protect its citizens against terrorists, but they were afraid that these actions were enhancing extremism among the youth.¹⁶⁷

Recounting their tribulations as Somalis since independence, they expressed hope that with the formation of the TJRC and the new Constitution, their lives would change for the better. They said that in coming to us, they believed that the government had the machinery to investigate and apprehend illegal immigrants and criminals without criminalising all Somalis in Kenya. The police were also extorting bribes from them, they said. They wanted NCIC to prepare a policy on inclusion to protect them from ethnic profiling. As a result of this meeting, we booked an appointment with the Minister for Immigration, Otieno Kajwang⁷ to discuss the matter.

Meanwhile, the Commissioners leading the Finance and Administration team spent much time at the MoJNCCA seeking for our salaries. We had been appointed in September, yet the financial year began in July so we were not in the budget. There was trouble in Trans Mara, Rift Valley Province between the Kipsigis and the Maasai, in January 2010. By 26th January 2010, five people had been killed and five others seriously wounded. The conflict in Trans Mara was not new. It was historical and the fresh flare-up was just a continuation of an old conflict about land and resources, which had not been resolved.

When I worked for KNCHR, I had gone to Trans Mara in 2005 with Commissioner Tirop arap Kitur to investigate the violence. We had walked and driven all day past miles and miles of houses razed to the ground in the conflict between the two communities. The Akiwumi Commission had given the background for the bad blood between the ethnic communities in Trans Mara, the Kisii, Kipsigis and Maasai to the colonial era:

“There is now lack of mutual tolerance and respect. The reasons for the change, we think, include the general influx of people into Maasailand from neighbouring Districts. Population pressure in Districts occupied by the Kipsigis and the Kisii, particularly, forced some people to move into Maasailand, which was then and even now sparsely populated. There was a system of passes, which regulated the movement of people across inter-tribal borders. Many of the Kipsigis, Kisii and Kuria got passes into Maasai land where they were accepted, and obtained land and settled there. They were generally referred to as “Acceptees” and they enjoyed all the rights just like the Maasai. Just before and soon after independence, however, the movement restrictions were relaxed, with the result that many Kisii, Kuria, and Kipsigis in particular, crossed over, made friends with some of the Maasai, and got land from them, either by way of purchase or as a gift. In other cases, however, the people settled on Maasai land which they found unoccupied. The population of non-Maasai increased tremendously. Enlightened Maasai and political leaders considered the influx of non-Maasai into their territory as undesirable.”¹⁶⁸

On 26th January 2010, NCIC had a meeting with the PS for Internal Security Francis Kimemia, who introduced the team officially to the NSC, which was responsible for District Peace Committees (DPCs). NCIC did not have offices around the country and therefore NSC, led by SK Maina (who would later co-chair the Uwiano platform for peace with me) became a very crucial partner in dealing with issues such as the ethnic conflict in Transmara through the DPCs.

Complaint against the Prime Minister

As Kofi Annan was meeting the principals on 25th March 2010, Moses Kuria, a PNU activist brought a complaint to NCIC. The complaint, on alleged utterances that the Prime Minister had made on 11th March 2010 in an interview on a local radio station broadcasting in the Rift Valley was handed over to us in the presence of the media. Kuria also sent out a copy of the complaint to media houses. Kuria said that he was concerned that the Prime Minister’s utterances would undermine reconciliation efforts. He brought a statement and an audio recording as evidence. Kuria wanted the PM summoned by NCIC to record a statement over the matter. We told him NCIC would respond to

him within 60 days as stipulated in the NCI Act, 2008. After intense investigations including interviews with the Prime Minister, we issued a finding. We found the Prime Minister not guilty.

VP's tips on cohesion and South Sudan's fragile prospects

On 30th March 2010, we paid a courtesy call on the Vice President, Mr Kalonzo Musyoka, who had been reported in the news constantly talking about cohesion. We needed to affirm him on that as well as see how we could work with to enhance cohesion. Beyond being a Vice President, Mr Musyoka was a staunch Christian and had influence over the church, which was a critical constituency. He was also the national chair of the scout's movement, which meant that he had another constituency among the youth.

The Vice President said that he sometimes wondered whether Kenyans were ready for freedom in 1963 considering the botched efforts to create a nation state by past leaders. He wondered what the people who had been detained in Kapenguria by the colonialist's thought of what came out of Kenya. Why, he asked, had they not thought of creating an NCIC in 1963? Having led the Sudan peace process, he expressed similar apprehension that the two Sudans were not ready to form nations telling us, "I fear for the two Sudans, that they do not make the mistake that Kenya did and fail to build a nation".

"I particularly fear for South Sudan and hope they do not make the mistakes we did. They must build a nation now; work on national cohesion and integration initiatives when they are still young." (South Sudan broke into violence in December 2013, proving him right). "NCIC needed to go to the grassroots," he said. "We had no money", we responded. Turning to the Minister for Justice, National Cohesion and Constitutional Affairs seated next to him, he said, "Mutula this commission is crucial to this country. Where is their money? They need to be felt." The Minister said that we were unfortunate to have come into office when the budget had already been passed in July but he was looking for funding.

The Vice President made fun of his oft repeated campaign slogan of *Nita pita kati kati yao na hawataniona* that literally translated to "I will pass between them and they will not see me". This, in political parlance

meant that “he would pass between the two extremes, Mwai Kibaki and Raila Odinga, emerging as a middle ground leader and they would not see him” telling us to literally pass through the middle between Kenyans, ensuring that we emerged as the key middle ground.

NCIC must fill the gap and provide a voice of reason, he said. This did not mean, however, that NCIC should shut its eyes, he added, urging that NCIC must establish who started the hate campaign in 2007. He asked that NCIC should take bold measures such as banning all-vernacular radio stations that had incited violence as well as address hate speech decisively.

He dwelled on our challenges as NCIC, saying that it would be impossible to legislate good manners, however, we could take up measures such as inculcating culture in the school curriculum so that when Kenyans said they were proud of Kenya, it would be heartfelt and beyond a mere slogan. He asked NCIC to speak specifically to faith-based organisations. They preached peace that could be useful if actualised into practice; they needed to be told so.

The VP talked about Kenya’s lost chances at national cohesion and advised us to learn from the past and drive the cohesion agenda without fear or favour. He also advised us to use political forums to preach cohesion, as there were a lot of people listening to politicians. NCIC was also to define hate speech ‘when someone called the other coward,’ he asked, “was that not hate speech?”

The youth in Kenya listen to politicians but there was a creeping culture that needed to be addressed – the culture of demand for money. Everywhere he went, he said, Kenyans would listen to him and then ask “*mnatuacha namna gani?* How can you leave us just like that?” This meant that Kenyans now wanted to be paid to listen. This culture had started during Moi’s era, he said.

He advised NCIC against mourning too much over history, because our work was hard enough as it was.

* * *

Another matter that affected ethnicity and race was the release by Planning Assistant Minister Peter Kenneth of a report on the poorest

and richest constituencies. The poorest were Turkana Central at 96.14%, North Horr at 94.74, Saku at 94.01, Wajir North at 93.38, Wajir South 89.32, Mandera Central at 89.84, Mandera East at 86.28 and Garsen at 84.64. All the poorest constituencies were in Kenya's neglected North and Upper Eastern areas. The richest were Kajiado North with a poverty index of 10.66%, followed by Kajiado Central at 12.98, Kajiado South at 13.98, Westlands 15.31 and Kikuyu at 16.36.

* * *

In a complaint brought to NCIC on Industrialisation Minister and chair of the ODM party, Mr Henry Kosgey, he (Kosgey) had appointed Joseph Koskey as the managing director of Kenya Bureau of Standards (KEBS). The PS, Dr Karanja Kibicho, had rejected the appointment saying that Joseph Koskey had come fourth in the interview. The law indicated that the Minister was to choose from the top three names forwarded to him by the PS. The Minister had picked the fourth candidate, whose name had not been forwarded and who happened to be from his ethnic community. The candidate had already reported to work. After a lot of deliberations and interviews with all the parties, including the minister and PS, we ruled that the process had to be repeated according to the rules. The candidate vacated office and our recommendations were followed in the appointment process. My fellow Commissioners in the particular committee responsible for complaints dealt with hundreds of issues NCIC received. We would however sit and make a joint ruling together as a full Commission when a major complaint such as this or the one against the Prime Minister was received.

Chapter 13

Pains and Gains for Cohesion: Agenda 4 Commissions' Findings

The Commission shall promote the elimination of all forms of discrimination on the basis of ethnicity or race.

– National Cohesion and Integration Act No. 12 of 2008, 25 (2) (a)

The Agenda 4 Commissions, designed like a jigsaw puzzle, each piece expected to find its space and fulfil a role that would contribute to a whole set of interlinked reforms continued with their work. The ultimate expected result was to be a reformed Kenya. Each was crucial to the other.

On 17th September 2008, IREC had handed in a report that analysed the constitutional and legal framework of the ECK and inquired into all aspects of the 2007 elections, including vote counting and tallying to President Kibaki and Prime Minister Odinga. CIPEV followed closely handing over to President Kibaki and Prime Minister Odinga their report on 15th October 2008,¹⁶⁹ detailing causes of the violence. CIPEV handed over a list of alleged perpetrators to Kofi Annan. The Kenyan Parliament was to set up a local tribunal with the mandate to deal with crimes committed during the post-election violence or take the cases to the ICC.

The IIEC that had replaced the disbanded ECK was preparing for the referendum on the Constitution. To do so, they had been working to reform the election management systems and setting up new ICT electoral infrastructure.

Meanwhile other commissions such as the CoE and the IIBRC were going round the country collecting views with many people showing up to participate. Politicians were attending the IIBRC sessions religiously,

taking keen interest because of the impact of boundaries on voting patterns. Some of them did so to ensure that they could influence the creation of constituencies where they would face minimal competition. From NCIC, we watched the politicians closely and constantly touched base with IIBRC. The need to secure voting blocs meant creating ethnic enclaves. The contestations over boundaries underscored the fear of ethnic exclusion and conversely, ethnic domination.

Expectations were high that the IIBRC would by the beginning of 2010 begin the process of coming up with a formula to guide the delimitation of administrative and electoral boundaries. This would guard against the habits of politicians of creating new administrative units for political reasons. This would also support our work in national cohesion and integration in regard to equitable representation across the country. Inequitable representation was a consistent factor quoted as leading to unequal distribution of resources in the country.¹⁷⁰

The Kofi Annan Accord had envisaged a situation in which the NCIC would, using the findings of the TJRC, cement a cohesion and integration strategy. So much of NCIC's success then depended on the TJRC successfully completing its task. Part of the TJRC's mandate was to examine previous reports on violence in Kenya and make recommendations to avoid recurrence. These recommendations would be a useful road map towards a national cohesion and integration agenda.

TJRC had released an itinerary of the places in which it would hold public hearings. They would begin in Coast province, then move to North Eastern, Eastern, Rift Valley, Western, Nyanza and Central provinces before winding up in Nairobi in a process expected to take at least eight weeks. In its first public sittings in Taita Taveta, land ownership had dominated the discussion.¹⁷¹

A group of NGOs had asked for the abolition of the Indemnity Act that granted individuals amnesty from prosecution for human rights violations linked to the suppression of secessionist forces during the Shifita war in the former Northern Frontier District from 1963-1967.

The Indemnity Act also barred victims of human rights violations from seeking compensation in any court, tribunal or commission therefore they could not take their issues before the TJRC. Districts

affected by the Indemnity Act included Isiolo, Marsabit, Moyale, Garissa, Wajir, Mandera, Tana River and Lamu. Similar concerns had been raised by a group of MPs from Northern Kenya led by nominated MP Mohammed Affey who said that the non-repealing of the Indemnity Act meant that “communities in the affected regions will not receive justice for atrocities committed against them by the state or its agents because they will be unable to institute proceedings or to seek any form of compensation or indemnity”.¹⁷²

Maasai leaders also wanted the TJRC to investigate how the community had lost millions of acres of land before and after independence. The Minister for Heritage William Ole Ntimama hoped that the reparation, restitution, and compensation should start with a review of the Maasai land agreements of 1904 and 1911, whose 100-year leases expired in 2004, that the Maasai had been duped and coerced into signing by the British despite being illiterate resulting in widespread death and displacement. This request was despite the TJRC’s mandate being limited to the period between 1963 and 2008. Ntimama wanted the TJRC to facilitate “an apology from the British Government for the mistreatment that was meted to the community and then all the land that was wrongfully taken returned”. He also said that the colonialists and post-independence administration took advantage of the Maasai nomadic lifestyle to alienate their land”.¹⁷⁴

Despite the setbacks, the TJRC suffered several setbacks including resignations by some of its commissioners. These and other issues slowed down its work considerably. However, they began dealing with matters of injustices in Mount Elgon region including places where people were killed and buried in a pit latrine in Kipsigon by the SLDF militia group. However, the negative developments had a profound impact on our work. The KNDR had created the Commissions in such a way that they fed into each other. NCIC was relying on the TJRC report to move towards concretising an integration agenda. How could NCIC move forward with a country that had not addressed its past?

On 10th September 2010, the TJRC swore in 30 statement takers and officially launched the process of evidence gathering in Nairobi. The TJRC also released a plan of activities. Taking public statements would begin in November.

Of all the commissions that had been created, CIPEV had been the one that had captured the country's imagination most. For months, Kenyans had discussed the commission's recommendation that those bearing the greatest responsibility of the PEV be handed over to the ICC if the government failed to establish a local tribunal. This would again be a hot topic in Kenya after the referendum.

IIEC in addition to conducting by-elections was also sensitising MPs on two new laws expected to reform the country's electoral system. The laws were the Elections Bill, 2009 to govern the conduct and management of elections and the Electoral Commission Bill, 2009 aimed at putting in place an effective electoral body.

IICDRC had also begun listening to cases arising from the forthcoming referendum and had ruled that prisoners would vote for the first time.

All eyes were however now on the CoE and their particularly important role of delivering a new Constitution that would serve as a foundation and launch pad for the expected reforms that would change Kenya.

CoE did all of us proud by unveiling a new Draft Constitution on 17th November 2009 at a launch all Agenda 4 commissions attended. The CoE gave the public one-month to debate the content and forward proposals and amendments. Thereafter, the commissioners took 21 days to incorporate the views. The Draft Constitution was presented to the Chairman of the Parliamentary Select Committee (PSC) on the Constitution, Manderu Central MP Abdikadir Mohammed on 8th January 2010. In turn, the PSC was required to prepare the draft as a Bill for debate in Parliament. The PSC revised the draft and returned the final draft consisting of views collected countrywide and all the previous Draft Constitutions to the CoE. They created a Harmonised Draft Constitution. It was this new draft that Kenyans were going to ratify or reject in a referendum in August 2010. On 11th of May 2010, CoE launched a 20-page simplified version of the draft, a handbook, training manual and curriculum for civic educators to carry out an intensive 30-day civic education programme. On 23rd February 2010, CoE published a proposed Constitution that was presented to Parliament for final amendments if necessary.

Chapter 14

Harmonised Draft Constitution: 2010 referendum

The Commission shall discourage persons, institutions, political parties and associations from advocating or promoting discrimination or discriminatory practices on the ground of ethnicity or race.

– National Cohesion and Integration Act No. 12 of 2008, 25 (2) (b)

The Harmonised Draft Constitution published by CoE had now begun to face serious obstacles. At NCIC, we had begun to fear that the draft would fall prey to incessant manoeuvrings by the political class, with the public being incited to vote for, or against, based on ethnic considerations. It was important that the ethnic incitement for and against the Constitution would be curtailed. The country had not faced a national election or referendum in 20 years without people dying. Could we avert deaths this time round? It did not matter whether it was a referendum or an election. The ballot box seemed to be synonymous with violence. In the 2005 Constitutional referendum Kenyans had died.

The Draft Constitution addressed the deep-rooted inequalities facing different regions. It was particularly good for minority ethnic communities. It addressed inequalities across a range of areas, including employment, health, social care, education and housing. These inequalities had been highlighted in the NCI Act, 2008, as problems but the new draft provided solutions. The Draft Constitution introduced devolution of resources to counties, and through a proposed equalisation fund, supported prioritising less developed regions. The Draft Constitution erased the logic of Sessional paper No. 10 of 1965 that had favoured the development of areas having abundant arable land, rainfall and transport facilities. This approach had resulted in favouritism of already developed areas. Kenya's big

communities occupied many of the favoured areas. This meant that the poorer regions occupied by marginalised ethnic communities saw development stifled and also had no scope to raise existing productivity because of lack of infrastructure.

The marginalisation had entrenched itself in the ideology of historical injustices fermented in the potent brew of the highly ethnicised unequal resource distribution grievances. These grievances had contributed to the 2007-2008 PEV. The Draft Constitution spelt out the national values and principles of governance such as patriotism, national unity, human dignity, and non-discrimination. It also recognised culture as the foundation of the nation.

Sections of the clergy ratcheted up a campaign against the CoE and the proposed Harmonised Draft Constitution and its drafters because of the retention of the Kadhis courts, which was contained in the old constitution. The clergy had taken a firm position against a new Constitution from very early on and would give the CoE a hard time until the conclusion of the Constitution making process. They were also not happy with devolution, arguing it would be too expensive and that regional assemblies would cause ethnic tension.¹⁷⁹

The evangelical churches under the umbrella of the Kenya Christian Constitutional Forum had called for the resignation of the CoE's chairman and entire committee. The NCCK also rejected the Draft Constitution and expressed misgivings over the country's ability to enact a new law before the 2012 General Elections. They wanted short-term changes, as they felt the country was moving precariously towards violence again. Reverend Canon Peter Karanja said, "Kenyans are feeling insecure and are stockpiling weapons. Politicians are making statements that are inflammatory and inciting". The clerics said religious issues should be left to religious bodies to solve.¹⁸⁰

NCIC was not expected to hold public positions on the Harmonised Draft Constitution and could therefore not campaign publicly for or against the draft. I was deeply conscious that if Kenyans rejected it, we would lose the opportunity to tackle social ills such as inequalities. The proposed new Constitution offered solutions towards reducing inequalities through decentralising the all-powerful presidency by devolving resources to 47 newly created county governments that

replaced the old provincial administration regions crafted by the colonialists. The Draft Constitution would undo the damage done by the colonialists and successive governments in creating a Kenya without equal access to resources. Devolution was a powerful tool in correcting this history. The new Constitution was very important in helping fulfil NCIC's mandate of ensuring equitable access to resources and opportunities for all Kenyans.

I was clear that from my work with the NCIC, I needed to approach the Constitution making process from two angles. One of them was on preventing conflict in the lead up to the referendum. The other was in passing subtle messages to Kenyans that the only alternative to not passing the Draft Constitution was the reality that they were voting for the *status quo*, which was the existing Constitution.

Preparing for a peaceful Constitutional referendum

As Kenyans geared up to vote in the referendum, I presented a concept note to the NCIC for a conference to be funded by UNDP on scenario setting, which was approved. I suggested that it was necessary to begin anticipating the framework for the conduct of the referendum and the mechanism for implementing the new Constitution. There were two clear sides – “YES” and “NO”.

I also suggested that the NCIC identify potential violence hot spots to facilitate conflict prevention. This would help us take steps to forestall any upheaval pre-, during and post-referendum. This was based on the fact that the last General Elections, 2007 and the last referendum held in 2005 had been too polarised and divisive. It was therefore important for NCIC to use the upcoming referendum to lay the foundation for a smooth transition to a new Constitution. Already there were pointers towards tension. The reports and hate leaflets we were getting were ominous. The “YES” and “NO” teams had begun zoning off the country into RED and GREEN and warning each other from trespassing.

The Standard editorial team pointed out another danger on Wednesday, 18th April 2010:

“Some disturbing vibes are starting to echo through public debate on the opposing sides of issues on the proposed

Constitution. The clash over emotive issues like abortion, land and the Kadhis courts' clauses in the proposed new law is threatening to turn ugly. In another setting, this could be deemed normal verbal sparring. However, a Constitution is the embodiment of a nation's soul and a covenant between citizens to agree to live by a uniform code. This code would redefine political representation and resource allocation. In times of disagreement or radical change like Kenya is undergoing, there is no room for hate speech. Sadly, dire warnings are being sounded at public rallies and no go zones marked out as leaders posture and bluster their way to voters consciences”.

Tensions were also brewing from unexpected quarters. An American based non-governmental Christian far right law firm, the American Centre for Law and Justice, opposed to abortion had said it was donating ‘tens of thousands of dollars’ to help defeat Kenya’s proposed constitution. This caused a furore in the “YES” camp. The firm had been founded in 1990 by a controversial televangelist Pat Robertson. Remarks that Haitians had earned themselves the earthquake that killed more than 250,000 because “Haiti had made a pact with the devil” had been attributed to him.¹⁸¹

The hate leaflets we had received earlier from Trans Nzoia had resurfaced prompting the Trans Nzoia West DC Wilfred Kinyua to ask locals not to panic. Kinyua blamed politicians over the leaflets that asked those who did not belong to the Pokot, Sabaot and Sengwer communities to vacate Trans Nzoia, Lugari, Uasin Gishu and parts of Bungoma Districts. The DC said that security agencies had launched investigations to establish the motive behind the circulation. The leaflets had been dropped in Kitale, Kwana and Cherang’ani. Cabinet Minister Noah Wekesa had claimed just a week earlier that there were plans by some politicians to evict a certain community from the area before the next General Elections.¹⁸²

Both the RED and GREEN teams ignored a warning from AG Amos Wako about early campaigns. The campaigns were expected to start after the 30-day period set for civic education under the Constitution review law. We paid a courtesy call on the Police Commissioner (title later changed to Inspector General (IG)) on 12th May 2010 and agreed to work together on hate speech. Our complaints team was inundated

with work. An organisation called the National Multi-Sectoral “YES” campaign committee said that former President Moi should be investigated for hate speech by the NCIC. They alleged that he had allegedly incited the public in Aldai constituency when he called “YES” leaders enemies of the people in the Rift Valley.

The most positive thing that had happened was President Mwai Kibaki and Prime Minister Raila Odinga both coming out to state that they were in total support of the Constitution. In so doing they defused tension between their ethnic power bases.

Constitution-making process

I met Mustafa Idd, an independent media producer (later MP for Kilifi South) and Kakai Kissinger of GTZ (later Deputy Registrar of the High Court) and together we came up with a concept that would explain to Kenyans the Constitution review process in detail. This would help them make rational decisions on whether or not to vote for the new Constitution. With the approval and participation of NCIC Commissioners, we produced and aired a five-part radio and television documentary series titled “Reclaiming Our Nationhood,” a month before the referendum.

The documentary helped Kenyans to understand the role of the Constitution and highlighted crucial social justice issues that it would cure. The documentary, produced in Kiswahili and English, featured freedom fighters, historians, academicians, politicians and NCIC Commissioners on the origins of the Constitution of Kenya in Lancaster House, its subsequent mutilation by the post-independence political class, the clamour for change led by civil society and some politicians, the failed 2005 referendum and the reasons for the failure. The documentary offered a comprehensive story of Kenya’s Constitution and earlier attempts at reforming and manipulating Kenya’s laws since independence.

Underlying the discussions in the documentary were critical messages of peace during the conduct of the vote. The country was in full campaign mode and the referendum was fast becoming a route towards preparing for the real elections. Ethnic undertones and appeals for ethnic groups to vote as blocs characterised the campaign messages.

The Muthaiga Club meetings¹⁸³

Meanwhile, one of the issues constantly on my mind was that we were not meeting Kenyans from all walks of life. We had several meetings with communities in the villages, with the middle class, and also with the people in the informal settlements. However, we were not reaching out to the upper class people. The Cohesion Leaders Circles solved this problem. The circles were organised as story-telling sessions between January and August 2010. Mike Eldon and Frank Kretzschmar, the consultants engaged by GTZ to assist the NCIC, introduced the concept. We held the Cohesion Leaders Circles' meetings at the Muthaiga Club Nairobi – the most elitist club in Kenya.

Writing about the Muthaiga Club in its early days, Gerry Loughran, said:

“Although the Muthaiga Club barred Jews in the early days, it had nothing in its Constitution against Africans or Asians since it was simply inconceivable that they would ever seek to join. But when Curtis-Cambridge graduate, editor of a quality *Fleet Street* daily, distinguished World War II soldier sought membership, he was blackballed. They believed he was bringing in a left-wing newspaper.”¹⁸⁴

This history brought smiles to my face as we strolled through Muthaiga Club's colonial façade. Mike was Jewish, Frank German and I African. In those early years, none of us would have been allowed to set foot at the Muthaiga Club. Muthaiga had not lost its elegance, with its high ceilings and straight-backed waiters seeming to have stepped out of a history book. Its walls were lined with pre-colonial pictures. I remembered a friend commenting that he had wanted to join the club for years, only to get in and find it so colonially suffocating.

Careful consideration was given to inviting participants who could benefit the conversation with contributions on experiences from professional and personal lives. Mike and Frank had held several leaders circles in Germany and Kenya before working with the NCIC. The Leaders Circles made sense because story-telling is a common practice in African communities through which elders transmitted information and knowledge about their societies. However, in the Leaders Circles, everyone shared experience on cohesion and integration. It was a great

opportunity to discuss ethnic and racial experiences. At the end of the story, each of us shared what lesson we had learnt from the experience and what could be done better.

The people we met with included engineer Patrick O. Obath, Chairman, Kenya Private Sector Alliance (KPSA), Martin Oduor, CEO, Kenya Commercial Bank (KCB) and Chairman, Kenya Bankers Association (KBA), Rukia Subow, Chairlady, Maendeleo ya Wanawake Organisation, Marsden Madoka, former Cabinet Minister, Prof Miriam Were, PS of the East Africa Community, David Nalo, Ashok Shah, CEO, APA Insurance, and Jake Grieves-Cook, Chairman of the Kenya Tourism Board (KTB), among others.

Referendum scenario setting held from 19th to 21st May 2010.

One of the other initiatives that I initiated was bringing together all the Agenda 4 Commissions in a scenario-setting conference. This was done in partnership with Dr Ozonnia Ojielo of UNDP, Duncan Okello of SID who later became the Chief of Staff of the Kenyan Judiciary and Prof Karuti Kanyinga of South Consulting, the team contracted by Kofi Annan to give quarterly updates on the state of the KNDR implementation. We worked with Duncan and Karuti to create scenarios for what would happen in the event that the “NO” side or “YES” side won. We planned on actions to take, based on recommendations from the conference in case either the “YES” or “NO” side won.

Ms Mary Onyango, our Vice Chair expressed interest in joining us. We began holding meetings with Dr Ozonnia and the Chair of IIEC, Ahmed Issack Hassan to plan for the conference. We also brought in the chair of the Kenya Law Reform Commission (KLRC) Kathurima M’Inoti due to his expertise in the electoral code of conduct. Hassan later became the Chair of the Independent Electoral and Boundaries Commission (IEBC). Kathurima later became a judge of the Court of Appeal. We agreed that the scenario discussions would be done in an open conference. We also agreed to invite about 500 participants. The NCIC was to host the conference. I got the NCIC approval to lead it.

We agreed that the objectives of the conference would be to: Create a safe space for national dialogue to share good practices that would shape

cohesion and integration practice in the 2010 referendum. Establish a framework for continued consensus building before, during and after the referendum. Provide a forum to reflect and clarify the process of the referendum to support on-going conflict transformation processes in Kenya. Provide a safe space to reflect on and audit experiences that would contribute to a peaceful referendum. To increase participation and agreement on a successful referendum and strengthen the capacity of multiple stakeholders to implement sound policies and practices through the formulation of a common declaration.

Managing expectations after plebiscite: Scenario setting

The conference provided a good opportunity for the chairpersons of each of the Agenda 4 Commissions to brief the public on what they had done. The CoE took the opportunity to educate the public on misconceptions that were being circulated on the Draft Constitution.

Karuti and Duncan led the scenario building session in which they pointed out that there existed two kinds of tensions in the country, reflected in the provisions of the proposed new Constitution, which the Agenda 4 Commissions needed to take care of. The first was that between the progressives and conservatives. Some provisions such as the Bill of rights reflected the progressives. The second tension was between nationhood and citizenship. The devolution into counties debate had been couched on the basis of ‘native mentality’ as opposed to citizenship.

There were fears too, informed by past experiences. In many political realities, new Constitutions usually came in successfully when old regimes were retired. In Kenya, we had a Government in power that was not going away. There was therefore a likelihood of the old regime undermining the new constitutional dispensation. These differences were definitely going to be played out in Parliament. There were also going to be religious and gender wars based on the provisions in the Constitution that the Church opposed. The conference participants agreed that the major problem was managing expectations on what the Constitution promised. The expectations especially on devolution were very high.

The key messages if the “YES” side won would be the prioritisation of implementation of a new Constitution as well as healing and reconciliation.

If “NO” won and the Constitution was rejected

In this scenario, the project of building Kenyan state/nationhood was going to suffer a severe blow. There would be a leadership crisis on both sides of the “YES” and “NO” sides. The President and Prime Minister would lose face. It was unclear how the “NO” side that was an amalgamation of diverse interests led by the clergy and Eldoret North MP William Ruto would consolidate their gains if they won. There was going to be uncertainty if we went to the polls under the old Constitution that had contributed to the 2007-2007 electoral violence.

A “NO” win would be a blow to all the Agenda 4 Commissions. Duncan said that if the Constitution was rejected, the Commissions would be “clinically alive but operationally dead”. If “NO” won, civil society that had gone all out to support the new Constitution would lose moral authority.

The conference agreed that leadership was really the crux of the matter.

After two days of discussions, the key recommendations from the participants for the Agenda 4 Commissions were that CoE and NCIC had a duty to hold a pre- and post-referendum joint forum for “YES” and “NO” teams to ensure that they accepted the results and denounced violence. We were also advised to tell the police to beef up security for hot spot areas, IIEC to ensure a smooth voting and NCIC run peace messages on all media channels, monitor hate speech, ensure civic education and work with the Ministry of Education to promote national cohesion in schools.

The key advantage of the Draft Constitution from the cohesion and integration agenda was that it cured the problems of divisions based on ethnicity or race. It gave hope for meaningful ethnic and race relations and cohesion and integration.

To prevent violence we needed the media on our side. On Tuesday, 16th June 2010, I worked with Rosemary Okello to organise a meeting with media practitioners to discuss the upcoming referendum. All the Agenda 4 chairs and several commissioners and Kathurima M’inoti KLRC chair

attended. The media was well represented with all the top editors from all media houses present. One of the key lessons that I learnt from that meeting was that the media were still hurting from the effects of the PEV; that no one had asked them what the impact of violence had been on them. The chairpersons of Agenda 4 commissions asked the media to hold leaders accountable for their actions.

Chapter 15

Clamping down on hate speech

When the Government was passing a Bill to enact the National Cohesion and Integration Commission (NCIC) no one seriously thought their services would ever be needed. How wrong they were ... Though the Commissioners are legally mandated to deal with propagators of hate speech, the latest summons of various politicians is a litmus test ... The utterances from various platforms over the past two months are sufficient fodder for them to stamp their authority and leave a mark on the footprint of Kenya's book of tolerance ... The NCIC team has already completed a good chunk of the work by putting out into the public sphere national ethos to guide national behaviour and consign hate speech to the dustbin of history and champion peaceful coexistence.

– *The Standard*, **Editorial**, 16th June 2010

In early June 2010, NCIC had established that there were sufficient grounds to raise hate speech and incitement cases against Assistant Minister Wilfred Machage, two MPs, Fred Kapondi Chesebe and Joshua Kuttuny, and a political activist Christine Nyagitha Miller. The statements they had made had been beamed live on television and radio. We had carefully perused the statements they made and were in no doubt about the need to take a decisive step. *The Standard* filed a story two days after we had made our decision on the same issue.

“In what seemed a well-choreographed approach, political leaders made highly sensitive remarks during the unveiling of the “NO” campaign secretariat, last Wednesday. They threatened Kenyans with bloodshed, evictions and religious wars if the proposed constitution is passed. (...). Kuria MP Wilfred Machage and his Mount Elgon counterpart Fred Kapondi have warned of tribal clashes if the proposed constitution is passed.

“If this constitution is passed, communities would hide under the pretext of claiming their ancestral land and drive others out of the land,” said Machage. He added that his own Kuria community “will surely reclaim” its ancestral land, which stretches up to Awendo, in Rongo District. “We would do so

since it would be law, even if it means using some force,” he warned.

Machage further claimed the new law would require the Kikuyu in Rift Valley to leave as well as other communities since the Kalenjin will have all the rights to claim it. And he told residents of Nairobi to prepare to give way for the Maasai who initially owned the plains before the colonialists drove them away.” Kapondi supported Machages’s interpretation, saying his Sabaot tribesmen would claim Bungoma and Trans Nzoia Districts. Machage had defended himself saying, “All we did was merely interpret the new law to Kenyans.”¹⁸⁵

Out of the four, Dr Machage was a man I knew well. He had been Assistant Minister for Home Affairs, where I had worked earlier before I joined KNCHR. I had been assigned to the Constitutional conference and had worked closely with Dr Machage to ensure that the Prisons department’s issues were well brought out in the Constitution. As the first person to earn a degree in medicine from his ethnic community the Kuria, he represented the highest aspiration of what a person from such a minority had risen to in Kenya. Children from Kuria had been interviewed and they all wanted to be medical doctors like him. I had called to congratulate him on his appointment as Assistant Minister. During the PEV, I saw reports that his house and offices housing his medical practice in Nyanza had been burnt down by ODM supporters because he was supporting PNU. I again spoke to him, and visited him in his office, this time expressing sympathy on his plight.

On the night when the police were hunting them down, I could feel the bitter taste of betrayal burning in my mouth. The taste of bile kept me up for most of the night. Was this what being an NCIC Commissioner meant, I wondered? This was a man I respected and had worked with. It was terrible that I had sat in a meeting in which all of us, commissioners, had approved the charges of hate speech against the MPs, including Dr Machage. These charges would result in prosecution, I knew.

Yet, for the sake of our beloved country and the integrity of NCIC, I had to let the law take its course. I could not call him and advise him to hide. On that particular night, as the text messages from the police

came in, telling us how close they were to the chase, I understood the meaning of integrity and felt the weight of my office. One of the MPs hid in Parliament. The police kept us updated on his movements, with details that included the type of food he sent for.

They were arrested.

The “NO” team literally saw red, accusing NCIC of being used by the principals, President Kibaki and Prime Minister Odinga, who were on the “YES” side, to intimidate them. It did not help matters that a few days before the arrest, the Higher Education Minister, William Ruto, had responded to summons from NCIC. The “NO” team was very angry with NCIC. Reports from the media said it all. *The Standard’s* headline of Wednesday, 16th June 2010 was “*Double Standard? “NO” charges State biased as Ruto quizzed while Kapondi, Machage, Kuttuny locked up over claims of hate speech*”.

On 16th June 2010, Dr Machage, Kapondi, Joshua Kuttuny and Christine Nyagitha Miller were arraigned in court.

Dr Machage was charged with four counts of hate speech, Mr Kapondi, one count on hate speech, Ms Nyagitha Miller with a charge of incitement to violence. Joshua Kuttuny was charged with distribution of leaflets targeting certain communities.

This was the first time in Kenya’s history that politicians were appearing in the dock charged with hate speech. The kind of things they had said were the substance of “normal” campaign fare in the past. But these were not “normal” times. Reactions were many and varied. The Supreme Council of Kenyan Muslims (SUPKEM) was swift to commend NCIC. KANU Secretary General Nick Salat led leaders from the Rift Valley in saying NCIC was being used to gag leaders opposed to the Draft Constitution. Immigration Minister Otieno Kajwang supported the NCIC.

Writing in the *EastAfrican*, L. Muthoni Wanyeki commented:

It is hard not to view the recent actions of the National Cohesion and Integration Commission with approval and sympathy. In trying to seize hold of their conceptually unclear mandate with respect to equality and non-discrimination, they are trying to respond to the public mood with respect to “hate speech”. This is a good thing. But we also have to ask whether we need new legislation on this – a small plethora of provisions still exists in

our penal code to cover what we are concerned about, covering both public utterances as well as media coverage of such utterances. Where there is clearly a gap is in respect of the new platforms on which hate speech is now primarily generated, on blogs, e-mail, internet discussion groups, list serves as well as through our mobiles.”¹⁸⁶

Muthoni was right. Provisions against incitement and slander existed in the penal code. Laws against hate speech existed in the Media Act too. What Muthoni and others did not know was captured in an emotional remark made by one of the investigating police officers to us in an NCIC meeting. He said:

“We covered the period before the 2007-2008 PEV. We went to all the campaign rallies and heard the ethnic slurs, the hate, and the incitement to violence of communities against each other. They were not new. We had heard them in previous elections and seen them result in ethnic communities that previously coexisted peacefully rising against each other. After the elections, the violence would stop until the politicians came back in another election year. We could do nothing with the information we had because politicians are powerful. If a case against any of them were instituted, they would find out the name of the investigating officer and get them posted either to the remote North Eastern Province or sometimes fired over a previous or made up offence.”

“So”, he concluded, “thank you for giving us political cover. It is NCIC that the politicians now hate, not us. It is you they will target, not us. Because of you, our jobs are safe. Before I began working with you on this matter, I had no idea how powerful people in offices with security of tenure like yourselves are. So, now we can do our work in peace”.

We were really feeling the heat. Many of us now had alternative cell phone lines, as we were afraid that our phones were tapped. Beyond the charges in court, NCIC had issued summonses and cessation notices to politicians who had engaged in hate speech but whose offences did not reach the threshold of a court charge, some of who were in the “YES” team. There was a steady stream of leaders walking into our offices to answer summons on hate speech and ethnic incitement. This had never happened before in Kenya’s history.

However, we did not make this public, as we did not want to isolate politicians by naming and shaming them, unless they repeated the offence. The “NO” team had really ratcheted up the campaign, with the only saving grace being that, they were not saying that we were wrong in having some of their members charged. They were saying that we should balance and have some of the people on the “YES” side charged too. NCIC must balance, they said, “can we see some ‘YES’ arrests”, they demanded.

We had spent months going through mountains of audio and visual recordings of the campaigns from both “YES” and “NO” sides. We could not find any evidence against the “YES” side. We sent out a public appeal for anyone with evidence to forward it to us. The pressure kept building up. Two days later, on 19th June 2010, I asked the Chairman of NCIC to allow me go downstairs to the CoE and ask the CEO Ekuru Aukot (who would be a Presidential Candidate in 2017) to help us organise a press conference for the Agenda 4 Commissions to speak out and support NCIC. We relied on the CoE for quite a lot of resources including staff, as we still did not have enough government funding to hire staff. NCIC still consisted of nine commissioners and 10 researchers. The researchers were on temporary terms with paltry salaries.

CoE Chair Nzamba Kitonga, TJRC chair Bethuel Kiplagat, IIBRC chair Andrew Ligale, IIEC chair Ahmed Issack Hassan and the NCIC chair, Mzalendo Kibunjia, all came. Ekuru Aukot and I quickly drafted a statement that the chairpersons signed and read to the media. Their message was categorical: hate speech had to be addressed. The chairmen expressed concern over the increasing state of intolerance among politicians ahead of the referendum. The statement further said that instability and continuous flashes of violence exist and therefore the possibility of a return of the 2007-2008 violence still existed. The statement also appealed directly to the principals and the political class, urging them to set up the infrastructure for peace in the referendum by sending out messages of tolerance and dialogue.

The chairpersons reminded the public that the country had only come from the brink of collapse only two years earlier and therefore, ought to be vigilant to stem a return to violence. “We as Agenda 4

commissions appeal to all groups to conduct their referendum campaigns with dignity and decorum.” Answering questions from the journalists, the chairpersons referenced the conference we had to map out scenarios for either a “YES” or “NO” win and were ready for whichever outcome. They promised to ensure coordination among them and deliver a peaceful and cohesive referendum.¹⁸⁷

Foray into the Lions’ Den, MPs’ Kamukunji

We had purposed earlier as NCIC in our term to meet MPs to discuss cohesion and integration. We had written letters asking for a meeting with the MPs in what they informally refer to as “Kamukunji”. We wanted to forge a relationship based on goodwill with the MPs. We were given an appointment for 22nd July 2010. We arrived early and sat in the lounge, taking tea and chatting with MPs who stopped by. As fate would have it, one of those who stopped by was Dr Machage, who had been accused of hate speech by NCIC. He recognised the chairperson and vice chair and came over to talk to us. I tried to shrink back into my seat, but he shook my hand, vigorously. “What are you doing with these terrible people?” he asked. Puzzled, my colleagues responded, she is a commissioner with us at NCIC.

Like Julius Caesar to Brutus, he responded: “Even you my sister?” Apparently, despite all my worries and my sleepless night on the day of his arrest, he had no idea that I worked with NCIC. My stuttered responses were interrupted by one of the commissioners who said: “Yes, she was party to making the decision on your case.” When we were called in, Dr Machage and I walked together to the chambers. I explained to him why we needed to do what we did. He, in turn, explained to me that he was extremely bitter; he had not been engaging in hate speech, he said, he had been interpreting the Draft Constitution as he had read it.

“What was wrong with that”, he asked, his voice loaded with emotion. “I have been criminalised for voicing what the minorities in this country are thinking.” The context, I told him, was wrong. We had just come out of a very violent election, and the likelihood of people literally taking the comments of their leaders as instructions to cause chaos was real. His statement had sounded really bad, I said. “But why

could NCIC not even give us a warning? Was taking us to court not too extreme?” Dr Machage continued.

I was extremely relieved when the Deputy Speaker Farah Maalim called the meeting to order, as the conversation was getting difficult. Even as the meeting began, the tension was palpable, as all the MPs charged under the NCI Act, 2008, were in attendance. The chairperson briefly explained the purpose of the meeting. The tension erupted when the vice chairperson Mary Onyango said that communities were arming themselves in some parts of the country in fear of the referendum. The MPs booed her and refuted the assertion. I was sitting right behind the fixed microphone that each of them had to come and speak from and watched their delivery keenly.

A female MP was very emotional. She accused NCIC of targeting her community for arrest. She was on the verge of tears as she accused NCIC of hating her “ethnic community” ignoring the response from one of our commissioners from her community. Member after member stood up to lambast us, with some shouting thinly veiled insults from the benches, even as the Deputy Speaker asked them to watch their language. I gathered the guts to respond to the lady MP. I said that we were not targeting only her community but all others that had militias. Then I began to name them, starting with my own community. The MPs shouted me down. Only one MP, Ms Cecily Mbarire, supported NCIC. She asked her colleagues to be honest, saying, there was fear in the country.

Although we had not invited the media, hoping for a closed-door meeting, there were reports of our meeting in the newspapers on the following day. We had no idea parliamentary reporters were in the chambers.

The *Daily Nation* reported that:

“National Cohesion and Integration Commission members had a stormy meeting with MPs at Parliament’s old chambers. The team was on a mission to woo MPs to preach peace in the referendum campaigns. They also planned to brief the politicians on what they described as the state of cohesion in the country ahead of the 4th August vote. But they met a hostile reception, especially from MPs identified, as perpetrators of hate speech. The Commission said that tension in the country was growing

and that in some parts, communities are arming themselves ... The commissioners stood up to the MPs and said they would not relent in their crusade against hate speech.¹⁸⁸

The National Cohesion and Integration law on hate speech was now operational even without NCIC involvement. On 8th July 2010, five men were arrested in Nandi over the circulation of hate leaflets threatening communities to leave the area before the 4th August referendum and prepare for war should the “YES” team win. The leaflets warned that two people would be killed at Kiptenden Tea Estate, seven at Koisabei, five at Tinderet factory and three at Kapsiton tea estate. The local DC Jacob Namuren, who coincidentally was one of my former classmates at the University of Nairobi, warned that more people would be arrested. A week later, there were reports that a civic leader had warned the residents of Trans Nzoia East District that they would not harvest their crops, if they voted for the proposed constitution because they were living on their ancestral land.¹⁸⁹ On Friday, 9th July 2010, the *Daily Nation* expressed concerns over the country’s stability in an editorial titled Kenyans cannot go on living in fear:

“As campaigns for a new constitution enter the home-stretch, discomfiting reports are emerging that some people are beginning to issue threats that those in their midst holding contrary views will be expelled (...) From past experience, the threats cannot be taken lightly. For this reason, the security personnel must move quickly to rein in those fomenting violence and hurl them before court to face criminal charges. Equally critical is the need to intensify surveillance and nip in the bud any attempt by the intolerant groups to cause mayhem. But the fundamental point is that threats of violence illustrate how deep the culture of impunity has been ingrained in our national psyche. (...) some communities are living in fear, conscious that they have no protection in law when their tormentors go unpunished (...) While recognising that some politicians have been charged for incitement, the point is that more must be done to the loose tongued.”

Even as Dr Machage’s and other cases were going on, NCIC received complaints from IIEC on hate speech utterances allegedly made by Chirau Ali Mwakwere, Matuga Constituency MP. This was in the campaigns leading up to the Matuga by election on 13th July 2010. The

complainants construed Mr Mwakwere's utterances as being likely to cause ethnic tension and disharmony in the constituency.

The statements allegedly incited the Digo, Duruma and Kamba communities whom Mr Mwakwere referred to as *Waafrica* (Africans) against the Kenyans of Arabic origin, who he had referred to as "*Waarabu na Wasmahili*" (Arabs and Waswahili) drawing a clear distinction between those who belonged and those who did not. Initial investigations by NCIC and the Criminal Investigations Department (CID) concluded that the circumstances presented a case that should proceed to prosecution. As was required by law, NCIC forwarded the file on Mr Mwakwere to the Director of Public Prosecutions (DPP) and the AG for prosecution. Mr Mwakwere was a Cabinet Minister and PNU's point man in the Coast region so life became even more difficult for us in NCIC.

Meanwhile the country was in full campaign mode and the referendum was fast becoming a route towards preparing for the real elections. Ethnic undertones and appeals for ethnic groups to vote as blocs characterised the campaign messages.

The disarmament exercise was still underway, with the North Rift Valley alone yielding 700 illegal guns and hundreds of ammunition in three months. The exercise had however encountered some not so unexpected problems. Herders and fishermen in Todonyang and Kibish on the Kenya-Ethiopia border had challenged the government to provide them with security before they surrendered the guns. They wanted to be protected from the Merille people who occasionally attacked them from across the border. "We have been forced to abandon fishing in Lake Turkana and move to safer areas due to marauding armed militia," protested Lwarengak civic leader Osman Elman. Two months before, a police officer and five civilians had been shot dead by Merille militia and 1,500 people displaced.¹⁹⁰

Chapter 16

The Birth of the Uwiano Platform for Peace

The Commission shall promote tolerance, understanding and acceptance of diversity in all aspects of national life and encourage full participation by all ethnic communities in the social, economic, cultural and political life of other communities.

– National Cohesion and Integration Act No. 12 of 2008, 25 (2) (c)

In Kenyan history, there had been two referendums, both accompanied by violence in 1962 and 2005. With the impending August 2010 constitutional referendum, it was time to engage gear towards conflict prevention. There was palpable tension in the country. Retired President Moi had earlier warned of more ethnic conflicts if the Rift Valley Province was broken up. The Harmonised Draft Constitution, in seeking to devolve powers to the counties, sought to do exactly that; break up the provinces, the Rift Valley included, into counties. The retired President had been reported as saying:

“The government should tread carefully when creating new administration boundaries to avert ethnic tensions that were witnessed during the PEV. Rift Valley is one of the most cosmopolitan regions in the country, and everyone wants to live in harmony, but should it be subdivided, you shall witness the worst bloody conflicts. He noted the proposed subdivision of the Rift Valley was being done to favour individuals not originally settled in the region. In Rift Valley, the majority are the Kalenjin, then Kikuyu and other small community members who have settled here and are enjoying the existing peaceful coexistence if the region is subdivided, there would be a lot of chaos.”¹⁹¹

President Kibaki had, in his Madaraka Day address to the nation on 1st June 2010, asked the police to crack down on people involved in hate speech. A grenade had exploded at a prayer rally on Sunday, 15th June 2010 organised by the “NO” camp at Uhuru Park, Nairobi, killing

six people. Kofi Annan issued a statement condemning the attack even as the “YES” and “NO” teams exchanged bitter recriminations blaming each other for the grenade explosion. NCIC urgently needed to drastically reduce the likelihood of more violence breaking out around the constitutional referendum period. The PEV of 2007-2008 was fresh in our memories and with various actors in the society having been blamed for the violence that nearly brought Kenya to its knees; all actors were to be reached if Kenya was to avert a repeat of the violence.

Dr Ozonnia had come to the office often to brief the chairman and commissioners on our discussions with the friends of NCIC team. It was during one of those visits that Dr Ozonnia and I began talking about how to prevent conflict prior to and during the referendum.

Our office in Delta House was a beehive of activity as we followed up on hate speech. The greatest concern was around the growing tension between Christians and Muslims. The Christians were advocating for the removal of the Kadhis courts from the Constitution. The politicians too were on the warpath and had begun uttering the same words that were in the hate leaflets that the newspaper correspondents had given us.

I wrote another opinion piece (Annex 4) to explain that the NCIC wanted to take serious measures against hate speech. It was published in the *Daily Nation* and *The Standard* newspapers on Wednesday, 21st April 2010, titled “*We have little choice but to penalise hate speech.*”¹⁹²

* * *

As the referendum date grew closer, we in NCIC and other various organisations were worried about the possibility of resurgence of violence. On 4th June 2010, I attended Queen Elizabeth’s birthday celebrations at the residence of British High Commissioner Robert Macaire. In a conversation with then Internal Security Minister, Prof George Saitoti, I was surprised when he said that he was worried about what would happen if the Draft Constitution was not passed. I watched him thoughtfully, as I sipped orange juice, trying to digest his statement. He appeared sincere. All along, I had expected someone like him to favour the old Constitution, having served as a Vice President

under it. His comments surprised me and gave me renewed confidence in the country.

Dr Ozonnia and I had meanwhile been meeting severally. We had been discussing the idea of a conflict prevention strategy that could link early warning of impending danger to early response. It seemed a practically logical response to what I had kept hearing from people as the post-election violence burnt Kenya, ‘we knew the violence was coming but we did not know who to tell.’ We planned to bring together NCIC, UNDP, NSC, and PeaceNet – a network of more than 500 NGOs as implementing partners. We knew this was unique and had not been done before so we intensified our planning. The following morning, we met Dickson Magotsi of the NSC, to discuss logistics for implementing this idea. A day later, we met him again, this time with Phillip Ochieng Onguje of PeaceNet. Unfortunately, Philip died in 2013 in a house fire as he tried to rescue his family. Dr Ozonnia and I explained our ideas to them, which they really liked.

A day later, Magotsi and Phillip presented a concept paper that reflected the results of our brainstorming session. They had really done a good job of capturing everything we had discussed. We then clarified objectives, outcomes and challenges. The only thing missing was a name. What were we to call our partnership, we wondered? It would have to be a platform for peace, we agreed. After some debate, we agreed that we would give the organisation a Kiswahili name. Dr Ozonnia asked what the word *cohesion* translated to in Kiswahili. *Uwiano*, Phillip, Magotsi and I responded in unison. Thus, was born the name Uwiano Platform for Peace. We had no way of knowing then that Uwiano would become a household name by the end of the referendum, during the general elections and long after I had left the NCIC.

Each of us then took the concept paper back to our organisations for approval. Then Dr Ozonnia and I convened our first full meeting of PeaceNet, NCIC, NSC and UNDP to give feedback on the concept. Two NCIC Commissioners Halakhe Waqo and Fatuma Mohammed joined me at the first meeting. Executive Director Mutuku Nguli represented PeaceNet, SK Maina represented NSC and Dr Ozonnia represented UNDP. We designated ourselves as the Principals of the Uwiano

Platform for Peace, and the first tier of leadership charged with policy making. We decided that Magotsi would head the secretariat, which would be the second tier of leadership. By the time the referendum took place, we had several staff from PeaceNet, UNDP, NCIC and NSC working full-time for Uwiano.

We identified and prioritised the potential violence prone areas, which included Njoro, Kuresoi, Molo, Eldoret, Kibera, Mathare, Korogocho and Likoni in Mombasa. Conflict triggers included the levels of unemployment, unresolved IDP issues, boundary disputes, proliferation of small arms, hate speech and circulation of leaflets and, panic self-displacement as a result of one or a combination of some of the triggers.

We also agreed on three main objectives for the Uwiano Platform for Peace, namely to: Build partnerships of national actors to address pertinent issues with regard to prevention of conflict during the referendum period. Strengthen early warning and early response mechanisms at all levels as a support mechanism for effective conflict prevention and intervention. Establish a solid foundation for national cohesion and integration for a peaceful and prosperous Kenya.

We wanted Uwiano Platform for Peace (which we subsequently referred to as simply Uwiano) to empower the citizens to prevent conflict and promote peace during the referendum. During the 2007-2008 post-election chaos, we learnt of cases where people knew about planned violence but did not know where to report. This meant that we had to create a link between citizens and law enforcement agencies. This was easier said than done. The 2007-2008 PEV had happened less than two years before. The Police had been accused of taking sides or promoting the violence. The citizens did not trust the police. Uwiano would fill the gap.

How would we do this? The answer was to use the mobile phone. The cell phone had been used to mobilise for violence; therefore, it could be used to mobilise for peace.¹⁹³ Engaging Kenyans through mobile phones would ensure inclusivity and people would be excited to participate in a peace process. Dr Ozonnia, Mutuku, SK Maina and myself met several donors to seek funds.

We drew on the strengths of the four organisations, pooling resources including finances and donating staff to Uwiano. We then began as Uwiano to deploy a pool of volunteer monitors to hot spots across the country. NSC had established DPCs to improve relations between rival communities, which Uwiano strengthened. Uwiano sponsored several peace meetings.

Uwiano Platform for Peace grew into a system that included online tools and features for tracking, reporting, and retrieving evidence of hate speech, incitement, and other forms of violence instigation in text, images, voice, and video. People were able to send alerts of possible or occurring referendum-related violence through a toll-free SMS Short Code (peace 6397) or by email. The toll free SMS number Peace 6397 was shared with all regional media outlets to publicise it. We had ensured that unless the word peace was keyed in before the number 6397, the SMS would not come through. The word peace before the number was strategic. By keying in the word peace before the number 6397, we hoped that anyone with ill intentions would think twice before sending out a negative text message. The toll free SMS number peace 6397 ensured that incidents or intentions of violence were reported in time and acted upon to avert possibilities of violence breaking out.

When incoming messages were received at the computer servers in the offices of the NCIC, NSC or PeaceNet, they were placed into one of six categories: – informative, threat, positive message, hate speech, coded message or incitement to violence. In order to verify claims of hate speech, violence or anything that might require action by the authorities, team members called the sender of the message as well as other officials in the area. The team forwarded the messages to relevant organisations or individuals to deal with depending on the content.

* * *

In the months leading up to the referendum, we went round the country, conducting joint consultative meetings on conflict prevention around the referendum and conflict analysis. In all of Kenya's regions, we brought people together, mapped out hot spots, identified divergent

issues and proposed a reliable way forward to ensure a peaceful referendum. Representatives from the provincial administration, police, opinion leaders, media and civil society attended each meeting from the particular region we went to. We analysed the situation on the ground and discussed ways to prevent violence during the referendum.

Uwiano's first press conference marked another ground-breaking shifting moment. For the first time in history, we publicly notified the country of the existence of potential violence hot spots. We explained the reasoning behind the branding of places as *hot spots*, places most likely to erupt into violence, the *warm spots*, places with the likelihood of erupting into violence in the future and *cold spots*, places where there was no likelihood of violence occurring. This was based on the countrywide conflict analysis. We also explained what steps each region ought to take to move their region from a hot or warm violence spot to a cold spot. The media quickly picked up the hot spot lingo, previously unused in relation to violence.

After the press conference, Julie Gichuru, one of Kenya's best-known news anchors, asked what she could do for Uwiano. She hosted one of the most widely watched news shows, *Sunday Live* on Citizen TV. Citizen TV was then the station with the highest viewership in Kenya. We agreed that she would use *Sunday Live shows* to give updates on the hot spots. Beyond that, she helped to coordinate our media campaign and played a key role in introducing Uwiano to the public.

The news on the hot spots was given prominence throughout the day and the week after. Some leaders immediately began denying that their constituencies were hot spots but we stuck to our facts. We had done our research and visited all hot spots. Besides the conflict analysis by Uwiano, there were frequent media reports of violence in those areas. Stories like the one below were regularly covered in the media.

In 2007, tribes, which were perceived as pro-government, were attacked, setting off tit-for-tat violence after the election in which 1,333 people were killed and hundreds of thousands rendered homeless. Provincial Commissioner Osman Warfa does not deny there is tension, but he insists: "What is causing panic is, people are not sure what will happen after the 4th August referendum."

In one of these meetings, a participant Mr Maina Mago had said, “Many young men congregate at popular corners in the evenings to idle and talk politics. It is disheartening to hear them derogate their opponents and sing war songs after drinking. They are surely stoking a fire. He said the Kalenjin and Kikuyu youths have aligned themselves to the “NO” and “YES” factions and regularly taunt each other. (...)

The justice system was slow and lethargic on matters to do with the PEV. With victims and perpetrators living side-by-side, it was not unexpected that there would be tensions. Kenyans were also very suspicious of the police and Uwiano came in handy as a trusted middle ground. Using my old media networks, we began door-to-door briefing meetings with the Uwiano team giving detailed reports on the situation on the ground to the editors on what we were doing. This earned us good press such as the *Daily Nation* editorial on Thursday, 15th July 2010 titled: *There’s urgent need to forestall violence*;

A joint government and civil society initiative to forestall violence at specific hot spots ahead of the 4th August referendum has come at an opportune moment. After the mayhem that followed the 2007 General Elections, everything must be done to pre-empt similar diabolical designs. In the new scheme, the NCIC is teaming up with security agencies, civil society and communities to sound early warnings. For a start, they have established peace teams in potentially explosive districts, whose mandate is to monitor and defuse signs of potential conflict, and where necessary, report to the security agencies. A toll-free telephone line is available for this purpose (...) Kenya’s 20-year multi-party history is replete with violence at every election. Many people have never distinguished between political diversity, ethnicity and economic might.

During political contests, the three are used to whip up emotions. The reasoning is very base: if one is not our own and subscribes to a position that runs contrary to ours, then he or she must be expelled. Tragically, violence thrives because of a lack of resolve to deal with the perpetrators. A culture of impunity has been entrenched, with the politicians failing to tackle it for fear of a backlash, while the judicial system reinforces it through lethargy. The country cannot afford another flare up. Security

must be intensified all round. Adequate resources must be put into use to stem chaos, and citizens alerted to the need to report undesirable elements in their midst.”

We intensified our field conflict analysis, in teams, again and again, particularly zeroing in on the hot spots, facilitating the communities to dialogue on their differences and inviting the media into our conflict analysis meetings. In time, the communities began meeting on their own without us. By 23rd July 2010, we had sent support in forms of money through M-Pesa, the Safaricom money transfer system to pay for the bus fare of protagonists in hot spots to meet and dialogue in places such as Molo, Wareng, Trans Nzoia West, Kisumu East, Ugunja, Kwanza, Tigania East, Kamukunji, Lang’ata, Njiru, Starehe, Westlands, Nyakach, Nyando, Baringo North, Marakwet, Mount Elgon, Rongai, Wajir North, Tinderet, Rongai, Embakasi, Likoni and Kirinyaga South. The communities discussed how to avert, prevent or transform the conflict in dialogues aimed at building confidence and trust. These basic initiatives helped strengthen constructive negotiation and consensus formation. Uwiano succeeded in enhancing the concept of community ownership of peace.

Many of the meetings were held under trees or in the traditional places that elders met to discuss serious issues. We kept attending meetings in areas with the highest potential of violence breaking out such as Mombasa, and the Rift Valley, especially Nakuru and Eldoret, which bore the brunt of the violence in the epicentres of the PEV of in 2007-2008 and had the key political opponents to the proposed constitution.”¹⁹⁴

Uwiano was also watching Central Province because if there was violence in the Rift Valley pitting the Kalenjin against the Kikuyu again, Central Province; a Kikuyu stronghold was likely to react against the Kalenjin and vice versa. This would likely flare up to a national violence.

Northern Kenya did not show any sign of potential violence as devolution, a key pillar of the Draft Constitution promised to end marginalisation through equal distribution of resources.

Uwiano also targeted the informal settlements in Nairobi, to avert violence. Security teams provided enhanced security and pledged commitment to take action on those who breached peace as well as

quick response on any early warning reports. These issues were openly debated and highlighted in the media.

To help in data collection, pools of monitors were spread across the country, with a particular focus on the hot spots. The monitors kept up a steady stream of information on what was going on in the country. We rolled out a public communication campaign with messages on national cohesion and how to report incidents and best practices in the print and electronic media. We also produced T-shirts and education materials with the slogan '*Chagua Kenya, Chagua Amani*' (I choose Kenya, I choose peace) and the SMS code for reporting.

Uwiano had meetings with several strategic partners, among them the IIEC. With time, the IIEC came to rely heavily on Uwiano to ensure peace as they processed the logistics of the referendum. Uwiano also teamed up with humanitarian agencies to plan and prepare for any emergency such as the Kenya Red Cross.

The humanitarian agencies' areas of greatest concern were the North Rift, South Rift, Nairobi (Kibera, Mathare, and Korogocho) and Mombasa, which meant that our conflict analysis of hot spots almost matched theirs. The agencies had planned, like us, for the eventuality of localised violence that could quickly transform into regional conflict.

With the hindsight of the 2007-2008 post-election violence, the agencies had planned to support up to 150,000 people with humanitarian assistance as an immediate reaction that they could scale up to 400,000-600,000 people in a very short space of time. The plan of the humanitarian agencies was that the Government of Kenya would lead the response in the eventuality of any outbreak of violence.

For all the Sundays in July 2010, Uwiano Platform for Peace held press conferences presenting what we dubbed the "State of the Nation Address". This was an analysis of the SMSses that had come through the toll free number Peace 6397. It also included highlights of hot spots and challenges, corrective actions taken by relevant authorities and a general appeal to Kenyans to maintain peace.

We also had a weekly Uwiano meeting to consolidate reports, review progress and highlight best practices to be shared with the public. We also met with the police to make decisions on preventive policing, identifying areas in which security needed to be boosted. On 23rd

July 2010, the media carried statements detailing the massive security operation rolling out to avert violence across the country.

“Fifteen thousand officers will be sent to the Rift Valley where some residents have started moving back to camps for the internally displaced persons. Tension is rising in the volatile province following the now familiar pattern of intimidation and the distribution of leaflets threatening eviction. The security officers have identified the areas, most likely to experience violence, the so-called hot spots, and directed their resources there (...)

By the end of next week, another 9,000 police officers drawn from the Prisons, Kenya Wildlife and Forest Services will be gazetted. A recent survey by the NCIC identified 29 hot spots across the country. Conflict is likely to revolve around land, opposing views on the proposed constitution and militias in those areas. Internal Security Minister George Saitoti has issued a stern warning against those threatening Kenyans.¹⁹⁵

Soon, reports started coming from the hot spots of people complaining of heavy police presence in their areas. This was a contrast to the countdown of the 2007 elections, whose outcomes later triggered violence in which Kenyans complained of a lack of policemen in the hot spots. Through continued media coverage, the public began to appreciate Uwiano’s work.

We had a major challenge though, as we could not get leaders to support the peace initiative. It took the ingenuity of Julie Gichuru, who sent out reporters to the field with instructions that they were to ask the leaders what they thought about a peaceful referendum. The leaders had no choice but to respond by rooting for peace. We used those clips to boost our media campaign.

Our “State of The Nation” address on 25th July 2010 was quite outstanding. We exhorted the communities to take charge of their peace and told them they could only do so if they had information. *The Standard* reported on the areas that we had singled out in which tension remained considerably high.

“We are not alarmists, but concerned groups voicing a genuine warning for appropriate intervention,” said Alice Wairimu Nderitu of the National Cohesion and Integration Commission. Another Commissioner, Halakhe Waqo said, “We are sending

early warnings to avoid chaos as has happened in the past”. A UNDP representative Dr Ozonnia Ojielo said: “It is up to Kenyans to decide what they want, but the international community is keenly watching how the Government uses state apparatus to protect the citizens ahead of the referendum and even after the referendum.” Chief Executive of Peace and Development Network Trust (PeaceNet) Mutuku Nguli read [names of] the mapped areas where he claimed residents, including civil servants, were fleeing. “We have collaborated our findings that tension is real. They are fleeing because they have been threatened with attacks or some are taking off because of the fear of the unknown,” said Nguli.¹⁹⁶

At the same time, NCIC played a key role in dealing with the political leaders. For instance, we cautioned President Kibaki and retired President Moi against public exchanges. A headline in *The Standard* captured one of such moments: “Cohesion team tells Moi, Kibaki to avoid public spat” – *The Standard*, Friday, 30th July 2010. The former President was bitterly opposed to the new Constitution and had taken to publicly questioning President Kibaki’s reform credentials. In turn, President Kibaki accused Moi of having failed to give Kenya a new Constitution during his 24-year rule.

At Uwiano, we intensified our peace campaigns through the media. We developed radio messages in both English and Kiswahili to reach a wider audience. The TV advertisements had a message targeted at Kenyans to choose Kenya’s future and avoid violence. We also produced brochures, flyers, stickers, caps, and T-shirts with peace messages. We brought in respected Kenyans to champion the peace campaign. We also used visual images to carry the peace message of Kenyans wearing the colours of the two sides, Red and Green together, their clothes emblazoned with the words ‘I choose Kenya, I choose peace’ holding hands. Everywhere we went, we told people Uwiano’s key message, that on 5th August 2010, the day after the referendum, a country called Kenya would still exist.

As the referendum drew near, we hit the ground running again, this time with peace caravans. The peace caravans were representative, including women, children, youth, religious leaders, men, civil society and, government agencies moving from village to village talking about peace dividends. We went through estates, villages and markets. In some

places, our drama team would act out skits of the common issues that brought about intra- and inter-ethnic violence, contextualised to the particular place. The actors and actresses would engage the audience by seeking solutions.

In Nairobi alone, peace caravans were in Embakasi, Westlands, Lang'ata, Dagoretti and Kibera – all of which had considerable media coverage. Peace caravans also went through Kitui, Kisumu, Eldoret and many other places that we had identified as hot spots to sensitise Kenyans on the need to maintain peace before and after the referendum vote. Everywhere we went, children chanting “*Chagua Kenya, Chagua amani*”, “Choose Kenya, Choose peace”, followed the peace caravans. Various media houses covered the peace caravans.

The final peace caravan of Uwiano was highly symbolic. Third August 2010 marked the end of the campaigns. We assembled at Uhuru Park in the afternoon to the beat of the Administration Police band, as we Uwiano principals, holding hands, led Kenyans in walking to KICC for a peace rally. The rally was televised live on Citizen TV. The crowd sang along to patriotic songs by musician Achieng Abura. *She would pass on a few years later.*

The culmination of the ceremony was lighting of symbolic candles. We first lit a few candles and then a few people walked around lighting others. We encouraged everyone with a candle to light as many candles as possible, equating the light to spreading our Kenyanness, telling people that the act of helping others light their candles did not take away from the first candle. We had announced that at one minute to seven o'clock, Uwiano was inviting the country to observe a moment of peace. At exactly one minute to seven o'clock, we went quiet, bowing our heads in thought and prayer as the candles flickered in our hands. **Close to me was a man, who sobbed quietly into a handkerchief, his shoulders heaving. He was crying for his country, a country whose “ethnic community” remained Kenya.**

At seven o'clock, Julie Gichuru was on air, telling Kenyans that there would be no violence with footage of our peace rally. She reassured Kenyans that Uwiano had done its homework and confirmed that all Kenyans would accept whatever outcome of the referendum. All other media houses were represented at KICC and the Peace vigil was

the first item on all evening TV prime time news. As we observed the moment of silence, SMSes were streaming in, more than 5,000 of them, from Kenyans who were watching us. Many of the SMSes said that they believed that peace would prevail. Thousands of messages were also sent to television stations.

* * *

On 4th August 2010, the day of the referendum, Uwiano pitched tent at Bomas of Kenya, the national vote tallying centre. Uwiano kept up a constant stream of information as incoming messages from the field were quickly analysed and forwarded to relevant authorities for action. The final reports of incidents were shared with the media. The chairperson of IIEC, Mr Ahmed Issack Hassan, came often to our tent, as did a stream of other people. From our interactions, Mr Hassan became a good friend. Several Ambassadors and MPs frequently came to the Press briefings to get first-hand accounts of the situation across the country.

The referendum results started coming in by early evening. We assembled in the main hall, a big dome of a room built in the shape of an African hut. The results were projected on two giant screens. By eight o'clock the gap between the camps started to widen. The "YES" side was gaining steadily against the "NO".

We held a joint press conference of Uwiano and all the Agenda 4 Commissions to reassure Kenyans that there was peace everywhere. This was not entirely true, as we had received reports that the Kericho road had been blocked by youths, in tactics similar to the 2007-2008 PEV period. The intention was to antagonise those deemed to have voted for the Constitution. This incident dampened our spirits, lifted a few minutes later when the person giving the information identified herself as the mother of one of the youths blocking the roads. We were amazed at the trust she had in Uwiano. There were indeed, Kenyans in Kenya. This mother knew that she could trust us with information on her wayward youth.

There was to be more drama when some politicians and church leaders in the "NO" camp stormed into the hall and complained that there was rigging. Rigging, after the 2007 botched elections, was always going to be a big story in Kenya. IIEC proved there was no evidence of rigging.

My work for the day was not done. I was due to go to Citizen TV station that evening to discuss the implications of the referendum vote. In one day, we had proved that Kenyans could face the ballot box without violence and we had ushered in a new Constitution that proposed such radical changes. Other panellists on Citizen TV were Dr Ekuru Aukot, CEO of the CoE and the Mandera Central MP Abdikadir Mohammed, chairperson of the Parliamentary Committee on Administration of Justice and Legal Affairs that had interviewed me for the position I held as NCIC Commissioner and Ekuru for his position. Julie Gichuru was our moderator.

We analysed the changes in the Constitution on Citizen TV, beginning at seven pm and leaving well after midnight. We took a break in between for Julie to read the news. Several people from as far as Rwanda and Tanzania called in and asked us questions. Many of the people who called in asked Mr Abdikadir Mohammed to run for presidency because of his role in steering MPs to deliver the Constitution and in setting up the Agenda 4 Commissions. People also called in to congratulate the Agenda 4 Commissions for a job well done.

Uwiano was to get the ultimate vote of confidence when in a plenary question and answer session at Bomas that was beamed across Kenya, a journalist asked the IIEC chairman Mr Hassan about the peace situation across the country on the evening of 4th August and he said, “Uwiano Platform for Peace was dealing with that and the reports we have from them is that Kenyans voted peacefully.” The final tally from the eight provinces was: **“YES” 4,780,734, “NO” 2,585,702, totalling 7,366,436 votes.**

* * *

By the end of the referendum we had received and acted on information about circulation of anonymous hate and incitement leaflets and claims of mobilisation against certain communities and interests in Molo, Wareng, Trans Nzoia West, Trans Nzoia East, Kwanza, Kisumu East, Ugenya, Nakuru, Tigania East, Kamukunji, Lang’ata, Njiru, Starehe, Westlands, Nyakach, Nyando, Baringo North, Marakwet, Mount Elgon, Rongai, Wajir North, Kirinyaga South and Kuresoi.

Uwiano commissioned two documentaries after the referendum. One congratulated Kenyans for delivering a peaceful referendum and highlighted the activities Uwiano engaged in to ensure that peace was upheld. We aired this documentary on all television stations on 27th August 2010 when the new Constitution was promulgated. A longer version of the documentary highlighted the *regional consultative forums, the SMS platform, peace vigil, emergency response fund, media engagements and interviews with the Uwiano team* and a cross-section of Kenyans.

Our final task was to tell the “YES” team to celebrate in moderation to avoid stoking tensions among those who felt their side had lost.

Key achievements of Uwiano

We delivered one of Kenya’s first ever-peaceful electioneering processes in the multi-party era. For the first time in this period, Kenyans had gone to the ballot and nobody had been killed. In reflecting on Kenya’s PEV of 2007-2008, many Kenyans said ‘we knew there was going to be violence, but we did not know someone we could trust to report to, who could take prompt action. Uwiano provided the much-needed link between early warning and early response.’¹⁹⁷

Uwiano had created Kenyans with a greater level of awareness and appreciation of mechanisms to promote peaceful coexistence in times of political processes. Kenyans would no longer be caught unawares by the threats of violence during elections, not knowing what to do. They had become conscious of the existence of Uwiano and DPCs.

Kenyans owned the achievement of a peaceful referendum. They had participated directly, through text messages and emails towards achieving a peaceful referendum process. This laid the ground for meaningful interaction between communities in traditional election hot spot areas that would be useful for preventing conflict in the next elections.

Traditional early warning activities in Kenya had been geared towards drought or famine not conflict prevention. Uwiano had changed the focus.

There was, for the first time, a proactive conflict prevention engagement between the national government and civil society towards peaceful elections.

Because of the engagement between national government and civil society, Uwiano managed to link, again for the first time, early warning and early response.

The traditional approach had always been that the government intelligence and law enforcement agencies would generate conflict indicators, early warning as well as respond. The Uwiano process provided a paradigm shift. *Wananchi*, ordinary Kenyan citizens had with only the power of a cell phone generated conflict indicators, early warnings and formulated responses through community dialogue meetings.

Kenyans were able to engage directly with the security agencies without having to report an incident through a police station. Members of the public could engage directly with the highest echelons of law enforcement through the Uwiano platform. Particularly gratifying for the *wananchi* was the call from the Uwiano data analysts that usually followed after they had sent in their messages. This call confirmed that they had been heard.

The Uwiano Platform was able to demonstrate practical conflict analysis skills and results to the country. In media meetings especially, journalists were fascinated by the need for effective, timely conflict analysis and the linking of early warning to early response. They were able to observe, first hand, action taken on information received from any part of the country.

The Uwiano Platform became a pre-test for the actual elections that we knew were going to be the real challenge.

Uwiano started off dealing with referendum related conflict issues. By the end of the referendum Uwiano was dealing with pastoralist conflicts as well.

Why did UWIANO succeed?

The main reason behind the success of Uwiano was the unique partnership of organisations such as Peace-Net Kenya, NCIC, NSC, UNDP and IIEC to support a wider peaceful referendum agenda. The flow of information between the organisations was excellent which was quite unusual considering that the partners were civil society, mainstream government, independent commissions and a UN body. Dickson Magotsi did a very fine job of coordinating all of us.

Kenya had just emerged from a particularly violent election in 2007-2008. Despite the fact that victims and perpetrators were living next to each other, without much progress having been made towards pursuit of justice, many Kenyans did not support violence. This partly informed the huge response to the Uwiano SMS campaign.

The media supported Uwiano to the hilt. Uwiano paid for peace messages in the electronic and print media, and T-shirts and materials with the slogan 'Choose Kenya, Choose Peace' '*Chagua Kenya, Chagua Amani*'. However, the media created awareness on the SMS code for reporting incidents for free. Citizen TV in particular had the number on the screen during the news hour enabling timely and appropriate responses from Uwiano.

UWIANO's Challenges

There was an overwhelming need for information, education and communication materials to be circulated across the country. However, inadequate funding meant that we had to scale down quite a bit. We also did not utilise vernacular radio stations for the same reasons.

In some places, Uwiano created expectations that were difficult to manage. To date, I still get requests to intervene from communities in conflict instead of them calling the police. There was a need to build self-reliance in communities to not only identify early warnings but to incorporate response capacities within their day to day relations with each other and law enforcement officers. If Uwiano was going to be effective during the next elections, local mediators would have to be identified and drawn from the communities. These would be people who could intervene from within.

Uwiano often received information that had nothing to do with the referendum such as complaints on corruption. Some people were also afraid to give information. A functioning witness protection programme would have been very useful to protect people who volunteered information.

Lessons learnt

To be effective as a conflict prevention mechanism in the general elections, Uwiano needed to widen its partnership base. Of particular importance would be bringing on board the IEBC, the body that would

replace IIEC. Uwiano would need to invest heavily in capacity building for the secretariat and staff on electoral peace building.

The early warning and early response system put in place by Uwiano would have to become a permanent feature of Kenya's conflict prevention mechanisms. Uwiano would need to ensure a continuation of a long-term communication strategy involving a public campaign leading up to the next elections aimed at ending electoral violence. Uwiano could not afford to disappear from the radar of Kenyan vision only to reappear during elections. Uwiano would need to redouble its fundraising efforts. It would be important for Uwiano to build on traditional methods of conflict resolution, building on existing structures to work with communities.

The civil society organisations working with Uwiano were all peace building NGOs. Uwiano needed not only to bring human rights NGOs on board but also those working on electoral issues. Many of the issues highlighted in the indicators and in the text messages were human rights violations. It was also important to structure an early warning and early response system, which incorporated a human rights perspective.

Peace messages for the media

We continued to work with Mustafa Idd and Kakai Kissinger to develop more messages for NCIC. We changed from the long documentary approach to brief commentaries by people of different ethnic groups who could speak languages other than their own. We had a Kalenjin who spoke Kikuyu, a Kenyan-Asian who spoke Luo, a Somali who spoke Maasai and a Borana who spoke Samburu. We then aired them on TV talking about the need for peaceful coexistence. We would only reveal their real ethnicity after they had finished speaking. The messages were also aimed to assure the public that the new constitution provided several opportunities for inter-ethnic communication.

The adverts were successful as they jolted Kenyans into realising that many people other than their own ethnic communities understood their languages. The adverts also prompted debate on integration. "Why did some Kenyans appreciate others enough to want to learn their language", was the question the adverts sought to get Kenyans to ask of themselves.

Promulgation of Kenya Constitution, 2010

I thank all the institutions established by the Grand Coalition Government under the reform agenda, for their valuable contribution.

**– President Mwai Kibaki speaking during
the promulgation of the Constitution**

Thank you for showing the world that we are not just a collection of tribes, clans and races. Thank you for proving that we, the people of Kenya, can still stand up and speak for ourselves when it matters most.

**– Prime Minister Raila Odinga
Addressing the nation at the same function**

The Constitution was promulgated on 27th August 2010. I woke up early to watch our Uwiano Press advertisements that congratulated Kenyans for delivering a peaceful referendum.

The euphoria for the promulgation had been building up since the Constitution was passed. It was literally a rebirth of the country. Symbolically, as had happened in 1963 when Kisoï Muniyao scaled the highest peak of Mount Kenya to plant the new flag, this time another group of Kenyans climbed the mountain and raised the flag yet again. They had timed their arrival on the peak to coincide with the constitution promulgation ceremony. This time they were planting not only the flag, but also leaving behind a copy of the new Constitution at Kenya's highest point.

In Nairobi, dawn was just breaking as I set out. The streets were full of people walking towards Uhuru Park, the venue of the promulgation. As commissioners, we had seats reserved at the podium. However, we had to board a bus to Uhuru Park at the KICC. I remember our bus was labelled Agenda 4 Commissions. We rode with two of my colleagues, Fatuma Mohammed and Halakhe Waqo, Bethuel Kiplagat, chairperson of the TJRC, Irene Masit of IBRC and Tiyah Galgalo of IIEC and many more. Hassan Omar, then vice-chairperson of KNCHR was cracking rib-tickling jokes. The mood was good, all of us revelling in the day, feeling so Kenyan and proud to have seen this day. This must have been what our parents felt like on Independence Day, in 1963. We did feel truly reborn as a country.

We drove into Uhuru Park, got off the bus and walked in. A huge crowd had gathered at the park and more people were streaming in. There was a thunderous applause as the Agenda 4 commissioners walked in. NCIC and Uwiano had delivered a peaceful referendum. Kenyans now knew what it felt like for people to face the ballot box without bloodshed. The CoE had delivered a new Constitution after more than 20 years of blood and tears. The IIEC had successfully piloted the electronic voter registration. The registration of voters and tallying of results during the by-elections and the referendum on the new Constitution had been a study in efficiency. Due to this efficiency, IIEC had given Kenyans hope in the electoral process. CIPEV and IREC had delivered their reports.

Collectively, we the Agenda 4 commissions had given Kenyans who had said they would never vote again because of fear of violence, hope. Walking into Uhuru Park that day to the cheers of thousands of Kenyans was a feeling beyond compare.

We sat at the front row next to the presidential dais. Hassan Omar sat right in the middle of a group of military generals making all of us laugh with his jokes. The generals tried to maintain straight faces but soon they gave up and we were all laughing.

Meanwhile, the crowds kept up a steady chant in recognition for those who had supported the new Constitution and booed those who had opposed it, among them, the clergy. Uganda's President Yoweri Museveni also suffered the wrath of the crowd, which booed him because of the row over the Migingo Island on Lake Victoria, shouting "Migingo". The master of ceremonies Sammy Lui chided the crowd, asking them to treat visitors respectfully. When Kofi Annan and former President of Ghana John Kufuor walked in, the crowd was near hysterical with songs of praise accompanied by a cacophonous din of horns and whistles. They were seen as the heroes who helped Kenya negotiate a peace deal after the 2007-2008 election violence.

There were also good-natured mock cheers in recognition of Kenyans who had made names in the wrong way. One of these was Kamlesh Pattni, one of the alleged architects of the Goldenberg money skimming scandal that had almost brought down the Kenyan economy in the 1990s. He and several prominent Kenyans had used his

company to allegedly acquire billions of shillings. Kamlesh had been in court and prison several times on fraud, theft and forgery charges. He always survived the scandals. Kamlesh had converted to Christianity, having been born into a Hindu family, and was now named Paul. He likened his conversion to the Biblical Saul who became Paul on the way to Damascus. He had reinvented himself in other ways too, setting up a political party. He was the living proof that a political party in Kenya did not need an ideology.

Kamlesh Pattni picked his way carefully to where we were seated as the crowd shouted 'Goldenberg, *mali yetu*', 'Goldenberg, our property,' and shook our hands, working his way down the entire row. Going back to the end of the row, he carefully picked from his pocket a set of business cards, which he handed out to us. The cards identified him as a 'leader of the house of traditional elders'. There had been media reports of Pattni registering himself as chair and a group of Kenyan elders as members of the Kenya House Council of Elders.

Pattni had been to Tripoli twice with the elders to meet Libya's President Muammar Gaddafi. As is usual with Pattni, controversy followed him even there. There had been reports of rifts between the elders who had gone to Libya because of gifts of vans, tractors and large sums of money given to them by Gaddafi and administered through Pattni. We sat there delicately holding the cards in our hands, wondering what to do with them as he tried to find a seat behind us.

One of the army Generals began to tear the card he had been given slowly, a mean look on his face. We watched as the General opened the gold button of the side pocket of his well-ironed brown uniform, carefully putting the pieces of the cards in his pocket. Then the General rubbed his hands together, like someone who had just completed a very dirty and unsanitary task.

Soon, all the dignitaries walked in and we were all waiting for the President and Prime Minister. The police band was trying to play some popular songs but the crowd's noisy din drowned out the music. Jeff Koinange, a famous TV anchor who had previously worked with CNN and had popularised, in Kenya, the phrase 'All Kenyan, All the Time' was standing on the roof of a TV truck that was broadcasting the event live, shouting out to the crowd 'All Kenyan' to which they would

respond enthusiastically, “All the time” and cheer wildly. The mood was akin to a carnival. The last time Kenyans had come alive in this way was on the day of the swearing in of President Kibaki in 2002. I had been there too, but on the terraces, as part of the singing crowds, not on the VIP dais.

Suddenly, the crowd went quiet and we wondered what could be happening. Sudan’s President Omar al-Bashir was walking in, swinging a walking stick and accompanied by the Minister for Tourism Najib Balala. In July 2008, the prosecutor of the ICC Luis Moreno-Ocampo had accused President Bashir of genocide, crimes against humanity and war crimes in Darfur. On 4th March 2009, Omar al-Bashir had become the first sitting President to be indicted by the ICC. The Court had also issued an arrest warrant but ruled that there was insufficient evidence to prosecute him for genocide. On 12th July 2010, the ICC had issued a second arrest warrant. The Sudanese government was not a member of the Rome Statute and did not recognise the ICC. The African Union, League of Arab States, the Non-Aligned Movement and the Governments of Russia and China had opposed the court’s decision.

Many Kenyans were still at this point supporting the ICC and therefore, were taken aback to see a man indicted by the court walking majestically in their midst and attending a sacred ceremony of ushering in a new Constitution. A group of South Sudanese diplomats were pacing up and down on the tarmac, all of them on their phones. “Whom were they calling,” we wondered; were they about to execute a citizens’ arrest”? Tension was hanging around the VIP dais like a velvet curtain. Ambassadors were conferring in small groups. When the President and Prime Minister came in, the crowd tried to work itself up again, but it was not the same anymore. The spirit had left Uhuru Park. I felt as if I could stretch my hand out into the hole the spirit had left.

A day later, the *Daily Nation* would say in an editorial: The invitation of indicted war criminal Omar al-Bashir to celebrations to mark the endorsement of the new Constitution sent a disturbing signal about the government’s commitment to dealing with transitional justice. It was particularly disappointing that Mr Bashir arrived on an occasion when Kenyans were celebrating the proclamation of a new set of laws designed to end the culture of impunity.¹⁹⁸

The Standard in turn said in its editorial: 'The State's' surprise guest, Sudanese President Omar al-Bashir, who is wanted by the International Criminal Court (ICC) at The Hague for genocide, war crimes and human rights abuses in Darfur, literally rained on our parade.¹⁹⁹

The event finally started with prayers. The crowd got its oomph back, in the wrong way, though. Ironically, the clergymen assigned to pray for the occasion had opposed the new Constitution. The crowd booed them as they prayed. An elderly man who offered prayers in the Maa language spoken by the Maasai community was wildly cheered though. The events went by in a blur. Various dancing troupes passed by, each representing many of Kenya's ethnic groups, each stopping briefly in front of the dais to perform their best bit. The Luo dancers, all elderly men were magnificent and dignified. The Luhya dancers were so vigorous in shaking their shoulders.

The Kenyan-Asian dancing troupe caused a stir because they would not leave until they were done, even as the master of ceremonies reminded them that their allocated time of three minutes in front of the dais was up. A few months before, we had received at NCIC a group of Asians led by activists Davinder Lamba, Prof Yash Pal Ghai, lawyer Pheroze Nowrojee, Sudhir Vidyarthi and author Zarina Patel. Prof Ghai was the man who had led the drafting of Kenya's new Constitution in 2002. They had come to deliver a complaint on discrimination against Kenyan Asians going back many years. One of Kenya's politicians, Martin Shikuku, had referred to Kenyan Asians in the 1970s as paper citizens.

This statement was made as Idi Amin the then Ugandan president was throwing out Asians from his country and forcefully taking over their businesses. Shikuku's statement had been allowed to simmer. There was virtually no social interaction between Kenyan Africans and Kenyan Asians.

Watching those dancers holding their ground, refusing to go away until they were done with their dance, reminded us that they were making a statement, saying to Kenya that they are here to stay, and were not going anywhere.

One artiste, Emmy Kosgei, stole the show and owned the promulgation. Emmy sang a Kalenjin song titled "*Taunet Nele!*". The song, aptly meaning "A new beginning" had provided hope to the

Kalenjin after the PEV and was now doing so for Kenya. The song brought the First Lady, Lucy Kibaki to her feet and the crowd followed. For a First Lady and a Kikuyu at that, to dance to a Kalenjin song at that particular time in history was itself striking.

Uwiano, during the conflict analysis prior to the referendum, had established that there was considerable tension between many ethnic communities in Kenya, more so the Kikuyu, Kalenjin, Luo and other communities in the Rift Valley. Uwiano had resolved, as soon as the referendum was over, to work on long-term methods of reducing the tension. Soon, everyone was crooning along to the Kalenjin song. It was a very surreal moment, spiritual even, with the huge crowd swaying to the beat of a song whose words they did not know the meaning of, yet it meant so much to the Kalenjin. That song carried the meaning of the day in its entirety. The Constitution did mean a new beginning for Kenya.

After the promulgation we milled around. My colleagues and I went to greet Kofi Annan. Pushing through the throngs of people, I asked Ambassador Nana Appenteng who headed the Kofi Annan office in Nairobi to ask the people around Annan to allow us to speak with him. We made it to where he was. Kofi Annan told us not to let up on our work. I also asked Ambassador Nana to book us an appointment with President Kufuor. I had in mind Dr Ozonnia's presentation at our induction in which he talked of President Kufuor's creation of a "national reconciliation and peace committee". I wanted to hear from President Kufuor how Ghana had survived without allowing ethnic differences to lead them to violence.

After the promulgation, we proceeded to State House for lunch. The ambassadors and foreign mission representatives decided to boycott the lunch because of Sudan's President al-Bashir. After the lunch, we took time to talk to people, among them, the First lady, Mama Lucy Kibaki and William Ruto. Mary Onyango and I walked up to Mr Ruto and explained that we wanted to build cohesion within communities in the Rift Valley and that we wanted to work with him. He responded that he would like to work with us, but would appreciate a letter that clearly stated what his role would be. We also spoke at length with Mama Ngina Kenyatta, Kenya's first First Lady and Uhuru Kenyatta's

mother and Mrs Nyiva Mwendwa, Kenya's first female Minister.

The Constitution ushered in a wave of parties that we were invited to as NCIC commissioners. The Prime Minister had a party to celebrate the Constitution on the evening of the 27th August. The Vice President had a party on 31st August at Parliament Gardens.

Meeting with President Kufuor

After the euphoria of 27th August, a day later, two of my Commissioner colleagues, Mary Onyango and Fatuma Mohammed and I met Ghana's former President John Kufuor at the Serena Hotel. We sought to learn from him how Ghana had survived numerous coups and a lot of upheavals and emerged as a cohesive nation. Mr Kufuor told us a lot of things. I have written them in the way he spoke.

Kenyans should start with accepting the Constitution as the supreme law. The Constitution should establish the centrality of citizenship, while identities such as religion should be secondary. Kenyans needed to understand that they were human beings within the jurisdiction of citizenship.

Human beings are central to the Constitution. Central to the Constitution too, was the need for intensive civic education in which human rights were taught as citizenship rights. In Ghana, parties are national and not based on ethnic groups. The country had started with parties based on religious and ethnic differences, like Kenya, but a law came into effect that abolished "tribal parties". President Kufuor told us that President Kibaki needed to be conscious of the new constitutional demand that the cabinet should not be filled with members of his community or any other one ethnic group. Civil society had been very important in Ghana's evolution as a nation state. Advocacy and the building of movements towards causes had been useful for Ghana and would also be useful for Kenya.

Mr Kufuor spoke constantly about religion; noting that religious leaders had been at the forefront of the agitation against the new Constitution. He, like all of us, was worried about the implications of a Kenya divided along religious lines. He constantly emphasised to us that the Constitution provided for space for Kenya as a secular state. In Ghana, he said, religions have learnt to accommodate each

other. The Muslim and Catholic clerics speak to each other. Mr Kufuor said that NCIC should anticipate citizens challenging religious leaders, noting that they had been ridiculed during the ceremony at Uhuru Park the previous day. One of the key things, he said, was to work towards getting the Christian religious groups to support the Constitution.

He added that devolution held the key to assuring inclusion. Competence in the Judiciary was also crucial for Kenya to achieve cohesion and stability. He advised us to ensure that Kenya did not draft too much legislation that could result in keeping counties away from the national base. Kenyans must know that they do not have to open a factory in the villages where they come from if it does not pay and be encouraged to invest anywhere in the country. Basic laws to govern the county would suffice – laws that emphasised promotion of development and what the state should do in terms of balancing the counties and ensuring equity.

Investments in education at the county level would be good, he said. In Ghana, he said, there were national policies promoting the education of children between the ages of four to 16. County laws as envisaged in the new Constitution should not compete with national laws. National laws should provide for equal access to health care, education, roads and electricity. However, he cautioned against the comparative advantages that counties had, saying that even among siblings, all are usually not equal and therefore, it would be unfair to hold the gifted back to make everyone equal.

In terms of national cohesion, nothing would glue the country together like a Raila Odinga and Uhuru Kenyatta partnership, he said. He talked about the promulgation reception that the Prime Minister had held the evening before. “Raila was relaxed,” he said. Raila and Uhuru have a duty to Kenyans never to betray the Constitution. They also have a duty to rise above “tribalism” as they were likely to be the ones ruling the country in the future. NCIC must work hard to get Raila Odinga and Uhuru Kenyatta together and ensure that their political parties have national representation, as the pair was likely to hold key leadership positions in future. Raila and Uhuru held the solution to Kenya’s unity if only they could work together, he said.

In Ghana, a key difference from Kenya was the fact that a leader could emerge from a small ethnic group. Kwame Nkrumah, Ghana's first president came from a small community. Hilla Limann, who won in 1979, also came from a small ethnic group. He, Kufuor was the first president from a big ethnic community, the Ashanti.

NCIC must invest in teachers, he advised. Appoint teachers as civic educators as they are already trained to teach. Teachers should not be retired; they are a very useful resource for teaching national cohesion. A teacher has security of tenure that is given by society; he or she does not need any from the Government. NCIC must invest in teaching the aspects of the Constitution that emphasise cohesion and work on creating an inter-party advisory committee.

Kenya is lucky in the sense that it has an independent and free media. The Ghanaian middle class is not as wealthy as their Kenyan counterpart. The Ghanaian middle class could not buy media houses as the Kenyans did. There are 60 FM stations in Accra. On our clarification that it was the politicians, not the middle class buying off the media, the President asked us not to worry too much about politicians buying radio stations. What we needed to ensure, was not to have laws that sanction media but ensure media responsibility through the Media Council.

We told Mr Kufuor about our plans for a national conversation on ethnic and racial diversity and of our plans to invite him. He asked us to channel the request through the Ministry of Foreign Affairs and invite him in his capacity as the President of Inter-Peace an alliance that deals with conflict and post-conflict issues he chaired. At the time, we had no idea how right he was on Raila Odinga and Uhuru Kenyatta's capacities to bring together or destabilise the country. In 2013 and 2017 Raila and Uhuru would be the leading presidential contenders. Their candidacies would divide the country once more into solid ethnic blocks. Mr Kufuor's predictions were spot on, unless Raila and Uhuru worked together, the country would never heal.

Chapter 17

Referendum Aftermath: Conflict Mapping and a New Constitution

The Commission shall investigate complaints of ethnic or racial discrimination and make recommendations to the Attorney-General, the Human Rights Commission or any other relevant authority on the remedial measures to be taken where such complaints are valid.

– National Cohesion and Integration Act No. 12 of 2008, 25 (2) (h)

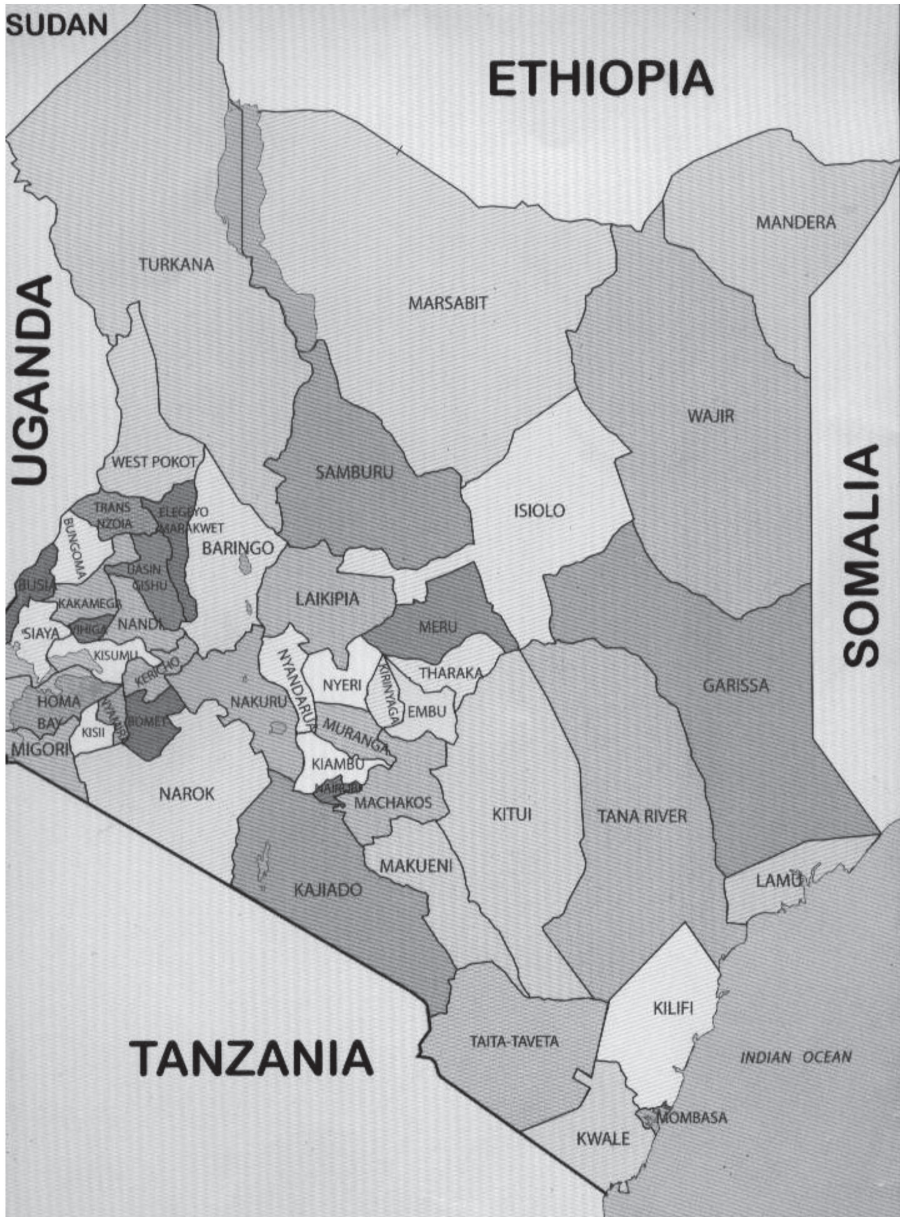
The tragic events of January and February 2008 will forever serve as an important reference point for any discussion on Kenya's future. Regrettable as the conflict was, it provided Kenya with an opportunity to ask of itself deep questions and obtain a fresh bearing. Constitutional, electoral and judicial reforms were long overdue. Despite Kenya's aspiration for democracy, the country faces huge challenges each election cycle. The four successive multi-party elections since 1992 had been held at great cost to life and property. Exclusion and marginalisation had thrived and the "second liberation" of the 1990s had not created a truly just society.

Long-term conflict prevention and transformation

The endorsement of the Constitution changed several dynamics. Since 1963, Kenya had experienced ethnicisation of the state that had seen regions that produced leaders develop.

The new Constitution had a host of positive things about the relations between races, ethnicities and religion and outlawed all forms of discrimination.²⁰⁰ Devolution of power was the most far-reaching effort to decentralise power and ensure equitable distribution of resources. Devolution promised to be what we needed to achieve social and economic development for regions that were hitherto marginalised and under-developed, if it was implemented properly. Devolution promised to bring about fair and equitable natural distribution of

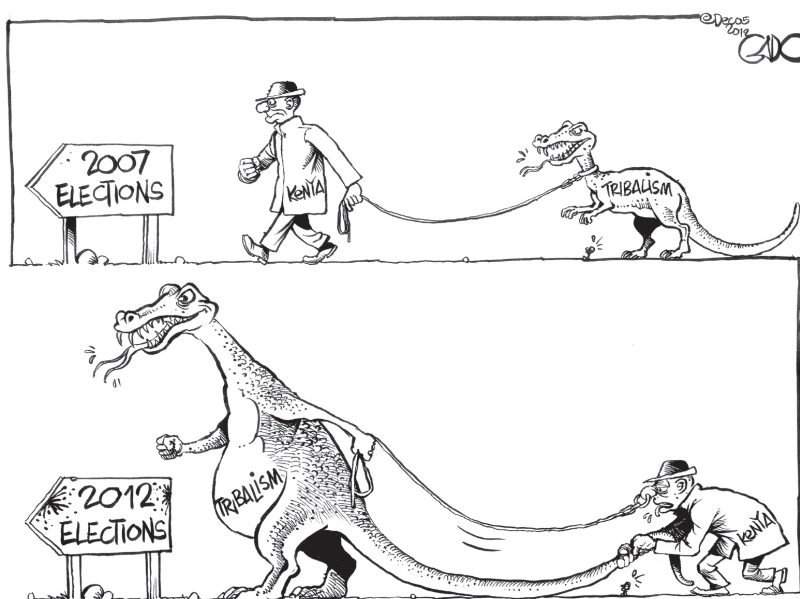
resources, ensure participation of people in their governance at the local level and guaranteed citizen participation.



Kenya after the referendum: 47 counties replaced the eight provinces

The protection and advancing of the rights of the marginalised and minority communities was assured, particularly in the Bill of Rights. However, the proof of the pudding would be in the eating; a lot would depend on the actual implementation of the Constitution. How for example, would the issue of community and ancestral land be handled under the guarantees provided in the new Constitution? Would we now see an El Molo, for example, Kenya's smallest ethnic community represented at the elective level? Would there be affirmative action that would lead to the appointment of minorities to key positions in government? Would the NCIC get the political support to ensure the enforcement of the guarantees in the constitution against ethnic discrimination?

After the referendum, I wrote an article (Annex 5) to advocate for a peaceful election and emphasise the need for equitable distribution of resources across regions and communities.



Cartoon on tribalism

Conflict mapping

After the referendum, Uwiano was back to the drawing board on conflict mapping. There were changes. The other two NCIC commissioners

Halakhe Waqo and Fatuma Mohammed left Uwiano, leaving only me as I was the ‘mother’ of Uwiano. Mutuku Nguli had left PeaceNet and Dr Ozonnia too had left to work in New York. Before Dr Ozonnia left, he hosted the friends of NCIC for a dinner at his house. At the dinner, I promised to write this book about Kenya’s turbulent period after the 2007 elections and our role in its recovery.

We held a meeting with Dr Ozonnia’s replacement, Dr Roba Sharamo, and Mutuku’s replacement Steve Kirimi plus the Uwiano secretariat. SK Maina and myself were elected the co-chairpersons of Uwiano. Our first task was to emphasise the need for conflict mapping and assess factors that could trigger violence. With the referendum out of the way, we could now begin to plan for the main elections that we expected would be held in August 2012, less than one and a half years away.

The table below shows the key causes of violence from structural and proximate perspectives and the conflict triggers that defined Kenya in the period after the promulgation of the Constitution in August 2010. Our analysis confirmed that not only was Kenya in trouble because of the unresolved issues arising from the post-election violence. It was also quite clear that many of the structural issues that had made the country break into violence in the 2007-08 had not been resolved. The data is shown by region.

Table 17.1: Key causes of violence from structural and proximate perspectives

Conflict Mapping Matrix 2011	
Conflict Factors	Peace and Conflict Actors
North Eastern <i>Structural</i> • Marginalisation • Clanism and clan-based violence • Land tenure systems • Border conflicts	Primary actors • Youth • Clans • Politicians
<i>Proximate</i> • Breakdown of grazing management system • Proliferation and trafficking of SALW • Diminishing roles of traditional authority structures • Influx of refugees	Secondary actors • Women • Politicians • Media/vernacular stations • Clan opinion leaders

Triggers • Banditry • Boundary delineation • Illegal allocation of land especially in urban areas	Tertiary actors • FBOs, CSOs and CBOs • INGOs • Elders, women, Provincial Administration, Security forces • DPCs • Politicians, Local authorities
South Rift <i>Structural</i> • Historical injustices in administration of land tenure • Caveat of title deeds in some parts of Mau Forest	Primary actors • Youth and <i>Morans</i> (warriors) • Politicians • Organised gangs
Proximate • Ethnic intolerance and mistrust • Low scale disputes • Human encroachment into wildlife reserves	Secondary actors • Politicians • Media/vernacular stations • Community elders
Triggers • Electoral politics • Forced eviction from Mau Forest Complex	Tertiary actors • CSOs, DPCs, CBOs, FBOs, INGOs • Provincial administration • Politicians • Community elders • Local authorities
Lower Eastern <i>Structural</i> • Land tenure systems • Religious intolerance between Christians and Muslims • Weak formal justice systems • Divergent land use needs	Primary actors • Youth • Political parties • Politicians • Organised gangs i.e. Mombasa Republican Council (MRC) armed wing)

Proximate • Boundary disputes • Ethnic differences • Exploitation of minerals • Business rivalry • Illegal immigrants • Livestock theft • Drugs and trafficking • Erosion of cultural values (tourism and prevalent child prostitution) • Radical criminal groups/armed gangs and armed communities • Non-issuance of Kenyan identity cards to locals • Conflict between formal and informal legal systems • Clash for water resources (farmers and pastoralists) • Clash over access roads to beaches • Destruction of mangrove swamps • Human-wildlife conflict	Secondary actors • Local and foreign investors • Opinion leaders/elders • Media/vernacular stations • Politicians • CSOs • Witchdoctors Tertiary actors • DPCs, INGOs • Inter-faith groups • Foreign and local investors • The Kaya leaders • Spiritual leaders from mosques and churches
Triggers • Political incitement	
Central Rift <i>Structural</i> • Historical injustices/land tenure systems • Enforcement of minority rights • Cultural practices, such as Female Genital Mutilation (FGM)	Primary actors • Politicians • Organised gangs
<i>Proximate</i> • Ethnic contestation for land • Ethnic power politics • Gerrymandering • Business rivalry • Livestock theft • Internally Displaced People	Secondary actors • CSOs, CBOs, FBOs and INGOs
Triggers • Political incitement • Politicisation of environmental concerns such as Mau and land issues • Arson	Tertiary actors • Provincial Administration • Security forces • Constituency Development Committees • Ranch owners

Upper Eastern <i>Structural</i> • Marginalisation • Ethnic intolerance • Retrogressive cultural practices i.e. killing as a sign of bravery	Primary actors • Kenya Police Reserve • Organised gangs • Youth • Local politicians (MPs, councillors)
Proximate • Politicisation of identity • Cattle rustling • Small arms trafficking and proliferation • Ethnic and political supremacy battles • Competition for water and pasture	Secondary actors • Provincial administration • CSOs, CBOs, FBOs and INGOs • Security forces
Triggers • Political and cultural incitement	Tertiary actors • Traditional leaders • Provincial Administration • District Peace Committees • NGOs, CBOs, FBOs and INGOs
Central Eastern <i>Structural</i> • Poverty • Identity consciousness • Weak justice system	Primary actors • Ethnic groups • Organised criminal groups
Proximate • Ethnic business rivalry • Inter-ethnic political rivalry • Fears of gerrymandering and dominance • Grievances based on appointments to head corporations • Land allocation/acquisition • Land grabbing • Corruption • Drug use • Identity politics • Small arms proliferation • Perceived unfair justice system • Human-wildlife conflict	Secondary actors • Elders • Police • Casual labourers
Triggers • Elections • Political incitement	Tertiary actors • Provincial Administration • Courts • Police • DPCs

Nairobi <i>Structural</i> • Weak judicial systems • Bureaucracy within the security sector • Uncoordinated chain of command within the security sector • Ethnicism • Ancestral claims over land	Primary actors • Politicians • Organised gangs • CSOs, FBOs • Hawkers • Construction workers • Football hooligans
Proximate • Electoral violence • Irregular allocation of public land • Politicisation of ethnicity • Political use of organised gangs • Land and property misappropriation • Landlord-tenant conflicts • Organised crimes • Unfair business rivalry • Unplanned city expansion • Youth unemployment • Illegal dumping of hazardous waste • Pollution of water resources	Secondary actors • Investors • CBOs, FBOs, INGOs • Pastoralist herders
<i>Triggers</i> • Incitement by vernacular radio stations, politicians and others • Elections • Withholding legal rent and fees • Illegal occupation of land and property • Evictions from illegal structures • Demolitions	Tertiary actors • Provincial Administration • DPCs • Security forces • Faith-based organisations and religious leaders
Western <i>Structural</i> • Marginalisation of the area • Inequalities in land allocation • Poor security infrastructure • Weak legal protection for land • Poor human rights enforcement • Border exits and entries	Primary actors • Morans • Dissidents i.e. SLDF • Politicians • CBOs • KPRs • Organised gangs

Proximate • Perceived ethnic deployment of Provincial Administrators • Reactive Government interventions • Political Patronage • Administrative and electoral boundary disputes • Land disputes • IDPs • Mismanagement of public resources and funds • Ethnic differences	Secondary Actors • CBOs, FBOs and INGOs • <i>Laibons</i> (traditional leaders)
• Diminishing influence of elders • Alcohol and drug abuse • Rural-urban migration • Small arms prevalence • Livestock theft • Criminality (burglary, theft, rape) • Lack of confidence in police • Low confidence in formal legal systems	
<i>Triggers</i> Incitement Forced evictions	Tertiary actors • Provincial Administration • Internal security • DPCs • Centres for Disease Control and Prevention (CDCs)
North Rift <i>Structural</i> • Marginalisation • Land tenure system • Boundary/border dispute	Primary actors • Labourers from large farms • Civil society organisations • Politicians • Organised gangs
Proximate • Politicisation of identity • Cattle rustling • Small arms trafficking and proliferation • Competition for water and pasture • Ethnicism	Secondary actors • CBOs, FBOs and INGOs • Cooperative groups • Politicians • Political parties
Triggers • Cultural practices • Incitement • Arms race between the communities • Banditry	Tertiary actors • Provincial Administration • Internal Security • DPCs • Business investors • CSOs • Constituency Development Fund (CDF) committee

Central <i>Structural</i> • Land tenure system • Class formation	Primary actors • Football hooliganism • Politicians • Organised gangs
Proximate • Intra-ethnic competition. • Succession politics • Operation of organised armed gangs in the community • Disputes over family inheritance • Mismanagement of cooperative societies • Business rivalry • Diminishing returns from cash crops. • Alcoholism	Secondary actors • CBOs, FBOs and INGOs • Youths
<i>Triggers</i> • Extra-judicial killings • Vigilantism	Tertiary actors • Provincial Administration, CSOs Security forces, DPCs and Investors • CDCs
Nyanza <i>Structural</i> • Marginalisation • Historical injustices	Primary actors • Football hooliganism • Politicians • Organised gangs
Proximate • Politicisation of ethnicity • Disputes over electoral and administrative boundaries • Landlord-tenant conflicts • Business rivalry • Class struggle • Perceived economic 'sabotage' • Foreign direct investment and land and social justice concerns • Land-use disputes • Poor waste disposal • Organised gangs	Secondary actors • CBOs, FBOs, INGOs and Youths
<i>Triggers</i> • Incitement by politicians • Livestock theft • Elections • Extrajudicial killings	Tertiary actors • Provincial Administration • CSOs, DPCs • Security forces • Investors • CDF Committees

A new Chief Justice for Kenya, *and an earring*

Meanwhile, interesting changes were happening elsewhere among them reforms at the Judiciary. The reforms involved creating an independent agency, Judicial Service Commission (JSC) and appointing a new Chief Justice and Deputy Chief Justice through a competitive process in line with the new Constitution. The nominee for Chief Justice was Dr Willy Mutunga and Deputy Chief Justice was Nancy Barasa.

Dr Mutunga had a sterling human rights record, as a co-founder of Kenya's first human rights NGO, and as a teacher of many of the region's leading lawyers. He was widely published and was fondly referred to in human rights circles as 'the father of human rights'. He had been a practising lawyer for many years, mainly representing the poor and the discriminated-against.

Nancy Barasa was a women rights lawyer. The International Commission on Jurists (ICJ), the Law Society of Kenya (LSK) and newspapers, among others, applauded the nomination of Dr Mutunga and Ms Barasa to the posts. Although Dr Mutunga and Ms Barasa were viewed to be the best suited for the positions, there was particular concern about Dr Mutunga, who spotted an earring, with the point being made that that was unAfrican and did not befit a person of his stature.

In NCIC we were concerned with the fear of a looming election with all unresolved judicial issues. Vetting of judges and magistrates had been on-going, as had the search for a new Inspector General of Police (IG) to replace the previous post of Police Commissioner in line with the new constitutional requirements.

International experts were still being sought to help Kenya with its reform agenda. An independent Judiciary was not only a crucial foundation for national cohesion and integration; it was a conflict prevention strategy. Kenya had been beholden for too long to politics at the expense of strong institutions.

The Judiciary had topped the list of institutions which Kenyans had serious problems with. It was seen as an extension of the Executive, with Judges, the Chief Justice and AG largely seen to have been

beholden to the powers-that-be. Corruption had been mentioned in the same sentence with the Judiciary too many times for comfort. It was due to lack of confidence in the Judiciary that ODM refused to file an election petition in court against the bungled 2007 elections and Kofi Annan referred the suspects of the 2007-2008 election violence to the ICC. So, the necessity and urgency to reform the Judiciary was not in question and the debate on the earring was an unnecessary distraction.

Chapter 18

Conflict prevention and the ICC

The Commission shall monitor and make recommendations to the Government and other relevant public and private sector bodies on factors inhibiting the development of harmonious relations between ethnic groups and on barriers to the participation of all ethnic groups in the social, economic, commercial, financial, cultural and political life of the people.

– National Cohesion and Integration Act No. 12 of 2008, 25 (2) (o)

With a new Constitution in place, the next big thing that NCIC and Uwiano needed to address was the impact the naming of the ICC suspects would have on the country. We embarked on several scenario-planning meetings with various groups. We planned for the first such meeting on Monday, 13th December 2010, and another one the next day at Simba Lodge Naivasha with the media. The crucial day was Wednesday, 15th December 2010 when Moreno-Ocampo would name the ICC suspects.

Kenya had ratified the Rome Statute in 2005 and domesticated it in 2008. The signing and ratification of the Rome Statute meant that Kenya had given effect to Article 4(2), which allows the court to exercise its functions and powers on the territory of any state party.

On 30th November 2009, Moreno-Ocampo had presented Kenya's case to the court at The Hague. He then spoke to Kenyans via video link from the UN headquarters. Moreno-Ocampo said: "*Victims should know that they are not alone in the quest. Nyanza, Nairobi, Rift Valley, Coast, Western and Central Provinces must know they are not alone... that they don't need to resort to violence to solve problems. The Kikuyu, the Luo, the Maasai and all the others must feel they are part of the global community.*"

Victims of the violence had 30 days to submit their views and opinion on the violence. Moreno-Ocampo had said over and over that he would make Kenya "an example to the world on how to protect the victims of violence".²⁰¹

Dr Ozonnia and I identified three journalists to help facilitate the workshop to prepare the media to handle the naming of the ICC suspects. They were Julie Gichuru, Kwamchetsi Makokha and George Sarpong, a journalist from Ghana, who would present an international perspective. It was very important that the sessions were facilitated by practising journalists so that their audience could feel that not only was there space for them to speak, but they were speaking to their own. We needed to create a space for media to speak freely to itself.

We wanted the journalists facilitating to lead sessions in which we would get answers as to whether the Kenyan media still retained the professionalism to contextualise events and honestly examine constitutional implementation gridlocks in addition to free fair and balanced reporting on the ICC process.

Julie Gichuru was tasked to mobilise the participants.

Julie facilitated the first session. During the tea break, Waweru Mburu, arguably the most famous presenter on Inooro FM, a Kikuyu radio station operated by Royal Media Services Ltd, owners of Citizen TV and several other radio stations, pulled me aside and asked what NCIC had against him (He passed on some years later). We had received several complaints about him and the NCIC chairman had met him to discuss his hard-hitting programme that consistently raised people's hackles. I explained to him that his language was frequently interpreted as hate speech. He denied it vehemently, telling me that Kenyans had become too sensitive to the truth. He told me it had taken a lot of persuasion by Julie for him to come for an NCIC-related function. We agreed to keep talking.

When we got back to the room, Kwamchetsi picked up the discussion by posing the difficult question: What could cause Kenya to break apart? The ensuing discussion was very heated, running over into lunch. Several issues were identified: The Judiciary was still handicapped and there were doubts if it could effectively handle a presidential petition. Trepidation on the outcome of the TJRC findings. Many Kenyans were ignorant about the implications of the new Constitution. Unemployment and the youth bulge. Devolution and the new electoral boundaries had created feelings of marginalisation among some people.

Table 18.1: Synopsis of challenges and opportunities as shared by the participants²⁰²

S.NO.	CHALLENGES	OPPORTUNITIES
1	Broadcasting in vernacular pits the community versus the national interest. The vernacular listenership seems to have blind faith in their politicians.	Through their reach, vernacular stations influence and shape opinion among people.
2	The media dedicates a considerable amount of time covering personalities as opposed to focusing on issues.	The media can cover peace initiatives and make them interesting for their audiences. There was so much silence on peace in 2007 and 2008.
3	Ownership of media houses by politicians interferes with the content of broadcasts. This coupled with editorial interference leaves little room for control by the reporters. A relationship between peace practitioners and the media is almost non-existent and where it exists, it's acrimonious. An example of summons by NCIC to one presenter was cited. There was need for open communication between the media and peace practitioners.	Opportunities for training media owners should be created.

4	Ethnicism should be tackled head-on. Is more stringent regulation a solution? Educating the masses through broadcasts has been relegated to a minor role. Civic education on pertinent issues such as correct non ethnicist cadre of leaders to elect should be constant.	Media can be used to create understanding, dispel wrong perceptions and enhance collaboration among people.
5	Media has been captured in cliques of vested interests leading to loss of objective reporting	Opportunities exist for joint cooperation as witnessed during the referendum when the media fraternity agreed to black out a press conference whose ramifications, should it have been aired, would possibly have been catastrophic.
6	Live call-in shows pose a major challenge on editing.	The media doesn't operate in a vacuum and thus a needs peaceful environment to effectively run.
7	Competition among media houses to air a piece as breaking news regardless of the impact it would have on the nation is a challenge.	

Insecurity – psychological and economic further fanned by politicians. Security sector reforms. Existence of organised criminal gangs. Porous borders had contributed to proliferation of SALW. Drugs and psychotropic substance abuse. Inequalities and inequitable resource distribution amongst the citizenry. Failure to address historical problems such as land, poverty and equity. Increased religious intolerance and ethnic divisions. The ICC process being framed as either as an ethnic and political sanitisation agenda as well as an affront to state sovereignty.

This was followed by a session on exploring individual responsibility in the context of the pursuit of peace, justice, fairness, truth and accountability as complementary values in journalism. These values are in constant competition – which takes priority over the other? Should truth be reported if the effect it has would be destructive? Should peace rank higher than justice? How these principles relate to each other is highly situational, how must they guide the trade?

George Sarpong spoke about institutional and policy responses, with Ghana as an example, and the journalists then broke into small focus group discussions. Uwiano presented the national architecture for peace with the day ending with discussions. We sat on late after dinner; all of us talking animatedly about the direction the country was taking. The following morning, George led the session on media accountability systems, specifically self-regulation, state regulation and co-regulation. This was followed by a further session on the media code of ethics.

Kwamchetsi began the afternoon session by asking participants to draw up a list of who they thought was in the ICC list and how they intended to cover the story on that person when the news broke. The session was titled *“Transitional scenarios from a media perspective – likely interpretation of indictments”*. There had been several lists circulating with names of journalists among others; every journalist worth his salt had received a copy of those lists.

Julie Gichuru, Dr Ozonnia, Kwamchetsi Makokha and I discussed at length on how we could ask the most important question: “Did anyone think that anyone in the media was a possible suspect and if so, what would we do?” Kwamchetsi posed the question diplomatically.

“In Rwanda and Sierra Leone,” he said, “some of those named as suspects were journalists. If we, as journalists, were named by the ICC as having committed crimes against humanity, what would we do?” he asked. The discussions eventually zeroed in on what came first in a journalist’s priorities; the ethnic nation or the Kenyan nation? “Did vernacular radio station journalists have a messianic complex in regard to their communities?” We asked. This question triggered a session of intense soul searching.

Ocampo Six

Almost every Kenyan remembers where they were on 15th December 2010, the date that the ICC Prosecutor Luis Moreno-Ocampo named the six suspects accused of perpetrating crimes against humanity. At the time, Kenyans not in the political class supported the process and did not see the ICC as an imposition on the country. MP’s, the Executive and the general public opinion arena had endorsed the ICC process as the surest way of ending violence and impunity in the country.

On that morning, still at Simba Lodge, Naivasha, as I sat with two journalists, Louis Otieno and Swaleh Mdoe for breakfast, journalist Joshua arap Sang walked in. We all joined in banter about the English football team that Sang supported, Arsenal. We had left him at the TV room two nights before as he watched his team play. The team lost. The journalists had been teasing him for two days about the loss.

I went back to Nairobi to prepare for an interview at Reuters where I was expected to give an analysis of the implications of the Ocampo list. Meanwhile, trouble was brewing at the IIBRC. Dr Ozonnia who had funded some of their projects and Kwamchetsi Makokha, their media advisor, had left earlier for Nairobi to put out the fires.

The messages that I had planned for the Reuters’ interview included an appeal for Kenyans to respect the decision of the ICC as part of an international judicial process. I also wanted to point out that the decision should not be used to trigger violence. I was at the Reuters office and watched as Moreno-Ocampo read out the names. He said he had reasonable grounds to believe crimes against humanity were committed, in the first prosecution case, by: William Samoei Ruto

MP for Eldoret North, Henry Kiprono Kosgey – MP for Tinderet, Minister for Industrialisation and ODM chairman, Joshua arap Sang – broadcaster and journalist and then Head of Operations, KASS FM and in the second Prosecution case by Francis Kirimi Muthaura – Head of the Public Service, Secretary to the Cabinet and Chairman of the National Security Advisory Committee, Uhuru Muigai Kenyatta – then MP for Gatundu South, Deputy Prime Minister and Minister for Finance and Major General Mohammed Hussein Ali – then Police Commissioner but now Chief Executive Officer of the Postal Corporation of Kenya.

The Prosecutor said the Judges of Pre-Trial Chamber II would review the evidence to determine if there were reasonable grounds to pursue the prosecution.

Before the Reuter's interview started, I realised that I had forgotten what I had prepared to say all morning. My mind was completely blank. Again, I felt the weight of my office. Speaking to Reuters meant speaking to the world. I remembered a piece of advice from a media friend. If you go blank during an interview, speak as if you were in a conversation with a good friend. This was supposed to be a moment of great joy to the country. For three years, Kenyans had waited for this moment, for the perpetrators to be brought to book. Yet I was thoroughly confused. A flash of anger struck me. Why had our political class reduced Kenyans to this level?

I was thinking about Ambassador Muthaura and the goodwill he had always extended to NCIC. He was NCIC's strongest supporter. When I began to speak, it was Ambassador Muthaura I thought of. Moreno-Ocampo, I said, had struck at the heart of the Kibaki presidency. After that opening, my sentences flowed. I talked of the need for respect for the rule of law. Then I appealed for peace. After the interview, I walked slowly from Reuters to the NSC office in Bruce House, thinking about Ambassador Muthaura and the good meetings we had with him. I walked with trepidation, my feet heavy to carry me.

I also thought of Sang. Earlier in the year, representatives from his radio station KASS FM had appeared before NCIC to respond to questions about perceived inflammatory statements from their station. I could not even bring myself to shake their hands and left the business

cards they slid across the table to me right there. I had read the CIPEV and KNCHR reports, which documented how the station played a role in spreading inciting statements. So, in my mind, KASS FM stood accused. The thought that kept running through my mind was that these were the people who would have guaranteed death for me in 2008, just by virtue of belonging to the “other” ethnic community. I had been to the Rift Valley and had seen many of the dead bodies on the roadsides. The most horrifying images for me had been the dead babies and old men and women. Why would one kill children, women and old people?

When the violence had begun in Naivasha, and I saw the pictures of Mzee Bernard Ndege’s smouldering family, I had felt exactly the same. Interacting with communities through Uwiano and then listening to the journalists in Naivasha had however changed me. I was confused. Was this what they called the Stockholm Syndrome, a psychological phenomenon in which hostages express empathy and sympathy and have positive feelings toward their captors? I told Kwamchetsi and Julie after we left Naivasha that the discussions in the workshop had actually made me into a commissioner. The journalists had made me understand that I could not afford, as a commissioner, to allow my ethnic biases to cloud my vision.

Beyond thinking about Ambassador Muthaura and Sang, I asked myself, “What had our MPs been thinking?” Why, if they really cared about the country, had they not strengthened the criminal justice agencies? Kenyans are a very proud people and this whole business of the ICC had thrown our sovereignty out of the window. It had become hurtful to hear Kenya being mentioned, at international conferences, among the conflict-prone countries like the DRC, Somalia and Sudan. Now, Kenyans would have to explain to the world how our leaders got indicted by the ICC alongside Charles Taylor of Liberia and all those Congolese warlords because we could not get our house in order.

By the time I got to the NSC offices at Bruce House, I was seething with rage. What was wrong with Kenya? Walking in, I found Dr Ozonnia and SK Maina, sitting quietly. Their composure calmed me down. SK said, “It has happened.” Then I joined them and we sat in silence for a long time, to be shaken awake from our reverie by the

peals of the bells coming from the nearby Holy Family Basilica. It was now six o'clock. We had been sitting for hours. The ground had shifted. Dr Ozonnia said "we have to plan for the next step, which must involve averting any violence." The pursuit for justice that may not guarantee peace had begun, S. K said. It was now up to us to find ways in which peace would go alongside justice, I responded.

* * *

Prior to the naming of the six, Philip Ochieng, a well-known columnist had speculated on the ethnic identity of those to be named.

"Prosecutor Moreno-Ocampo will be looking for individuals from three main communities – Kalenjin, Kikuyu and Luo. Indeed, it seemed at first that the problem was between the Kikuyu and the Luo – the two perennial political adversaries. Occasioned by a presidential race between a Kikuyu individual and a Luo individual, the skirmishing led many to think that – as hitherto – this one was also purely political (..) the real grievance was much longer-term and had only a secondary link to the polls (...) the 2007 tension, rather, was between the Kikuyu and Kalenjin."

He was only saying what Kenyans had been discussing all along but was now the hottest topic. The discussions on social media, market places, dining tables and firesides, lakeshores, wells and all the communal places that Kenyans met was not on the crimes the six were accused of, but their ethnic communities. Moreno-Ocampo's list had three Kalenjin, one Kikuyu, one Meru and one Somali. Before the naming of the six, Kenyans supported the ICC. But now the national narrative had changed from that of the need for justice for the victims to that of those who were not on the list. Clearly Moreno-Ocampo had not understood Kenyans. Kenyans looked for ethnic balancing everywhere, even on his list. One of the immediate reactions was on the missing 'O' in the list. Most Luo names begin with the letter 'O'.

A few months later, a journalist wrote about this phenomenon saying;

"On the day Luis Moreno-Ocampo made public the names of the violence suspects, a TV journalist randomly sought the opinion of Nairobi residents. Opinion varied, depending on

the respondents' surnames. But one could tell that there was a keenness to determine the ethnic composition of the list. While most of the respondents were considerably restrained and urbane in their "politically correct" responses, one woman let the cat out of the bag. She raised a concern which many politicians have not gathered courage to voice in public, but which may have significantly changed the plot in the ICC narrative.

"Ninaona kuna watu kutoka PNU na ODM na biyo ni sawa. Lakini hakuna 'O'!" (The list contains individuals from both PNU and ODM. Okay. But why does it not contain an "O"?). The missing "O" has also ignited the debate on the meaning of mass action, with focus on the ODM inspired youth protests after the 2007 election. ...

In a petition to the UN Security Council, PNU has accused ODM of a plot to shield key violence perpetrators who, in their view, were spared by the prosecutor. "This is a gambit calculated to ensure that leaders of the ODM faction whose role as premier masterminds of 2008 and whose proclivity to violent strategies to gain power are publicly known. They will never be called to account or face justice having been curiously and conveniently omitted by Moreno-Ocampo in his list," said PNU Secretary General Kiraitu Murungi.

The Kalenjin and the Kikuyu had provided the bitterest battleground during the violence. The Kalenjin, Luhya and Luo had driven the Kikuyu and in some cases, the Kisii, Embu, Meru and Kamba out of their farms and businesses. The Kikuyu had revenged on mainly the Luo and the Kalenjin. Both sides had killed many of the other. The internally displaced people had not been resettled or gone back to their farms. But the fact of the missing 'O' would provide the momentum for a new narrative. That the 'Os' had worked in cahoots with the prosecutor's office to fix the Kalenjin and Kikuyu for political reasons. This was a narrative that Kenyans were familiar with, that of an ethnic community's elites allegedly fixing another politically. It was believable. In naming Uhuru Kenyatta and William Ruto, a Kikuyu and a Kalenjin, and leaving out a Luo, an 'O', Luis Moreno-Ocampo had, incongruously as it may seem to non-Kenyans who do not understand

the ethnic question, given the two ethnic blocs the leadership mantle. He had made them martyrs. The narrative had changed.

We received an SMS at Uwiano that read:

The Luo Council of elders had planned installation of their paramount chair *kesho* (tomorrow) and had requested attendance of Kikuyu elders from Nakuru. Due to the Moreno-Ocampo list which appears to exonerate their community, Kikuyu elders will not attend *'Kwi hindi ya kwi ikaria na nyumba yona iikarie*. (There is a time to be alone and the house had decided to stay by itself).

On Monday, 23rd January 2011, the Pre-Trial Chamber II of the International Court announced further changes ruling that four of the six accused would proceed to full trial on charges of crimes committed against humanity. The four were Uhuru Kenyatta, William Ruto, Joshua arap Sang and Francis Muthaura. The cases against Henry Kosgey and Major General Mohammed Hussein Ali were dropped. After the ruling was read, President Kibaki asked the AG to form a legal committee to draft the Government's response. The Vice President Kalonzo Musyoka expressed solidarity while the Prime Minister said, ambiguously that the accused were innocent until proven guilty, but that, he hoped justice would prevail. The four lodged an appeal against the ruling that was dismissed.

On 23rd March, GEMA met and made several declarations, including collecting more than two million signatures to support an appeal that the cases be heard after the next General Elections. Two people on the list were from the GEMA community; Uhuru Kenyatta and Francis Muthaura. They also indicated that they would appeal to the UN General Assembly if need be. The other declarations included the pursuit of the resettlement of IDPs and the presumption of innocence until proven guilty. They said that if Kenyans were not guaranteed an all-inclusive election, they would convene a national coalition to protect the interests of their communities and safeguard the future of the nation.

The Kalenjin, Maasai, Turkana and Samburu (KAMATUSA) leaders also met in Eldoret and declared that they would, among other things collect more than three million signatures to petition against the case. They also had two members on the list William Samoei Ruto and Joshua

arap Sang. NCIC issued a warning to both GEMA and KAMATUSA to desist from any activities that would cause divisions. However, the hands of NCIC were tied in the sense that the Constitution entrenched freedom of association, assembly, information and expression. Therefore, we could not stop GEMA and KAMATUSA from showing solidarity with their community members. We could only act if they used the meetings to mobilise against other communities; we had no evidence that they had done so.

It was also not a clear situation of ethnic communities ganging up. There were Kalenjin MPs on Raila's side, seven of who did not attend the KAMATUSA meeting and a group of Kikuyu elite standing publicly with Raila Odinga.

Ruto was yet to formally leave Raila's ODM party although he was technically in an alliance of politicians called the G7 with Uhuru Kenyatta and five others. The seven consisted of Uhuru Kenyatta, Eugene Wamalwa, William Ruto, Charity Ngilu, Kiraitu Murungi, Najib Balala and Kalonzo Musyoka. The country was at a loss because of the constitutional ambiguity over whether Uhuru Kenyatta or William Ruto could run for the Presidency. Nothing on the cards indicated they could. Everything was stacked against them. Beyond the constitutional ambiguity, there was the Leadership and Integrity Bill (2012). It was feared among their supporters that if the Bill passed, it could disqualify Uhuru Kenyatta and William Ruto as Section 12 stated *inter alia* that a person who has been adversely mentioned in an inquiry report adopted by Parliament shall not qualify for appointment or election to a state office. This was irrespective of whether the matter he/she had been mentioned in was resolved or not.

What was clear was that, the ICC had cemented Uhuru Kenyatta and William Ruto's joint fate.

Two parties and three voters had filed a case seeking to have Uhuru and Ruto barred from running for political office. After the confirmation of charges against them, the case was withdrawn on the assumption that the ICC had now sealed their fate. The politicians began making political mileage out of the situation. Prayer meetings began to be held countrywide for Uhuru Kenyatta and William Ruto. Both of them used the meetings to declare their interest in running

for the presidency. ODM in turn held a prayer rally for “victims of the post-election violence”. Both sides exchanged ugly words.

The media, in an attempt to put things in context, published stories on Kenyan leaders denouncing the local tribunal and supporting the ICC process, including speeches in rallies and debates in Parliament. But that did not change the discourse. The narrative had shifted that it was communities, not individuals, who were on trial at The Hague. It was however clear that the ICC process would proceed regardless of local protestations. As things unfolded, the ICC became an election campaign tool with political leaders forming ethnic alliances based on their perspectives on the trial.

Vice President Stephen Kalonzo Musyoka meanwhile led a team of government officials to visit various countries to press for the deferral of the ICC trials. The team met several Heads of State of South Africa, Malawi, Libya, Ethiopia and Nigeria, among others. The team also met UN Secretary General Ban Ki-Moon, delivering a letter from Kenya’s President Mwai Kibaki. ODM protested that it was not consulted on what the Vice President was doing. The VP promised Ban Ki-Moon that Kenya was ready to try PEV perpetrators at home based on the 2010 Constitution and that the country was keen on national healing and reconciliation.

A multi-agency taskforce to investigate and prosecute the 2007-2008 PEV cases was set up. The terms of reference of the taskforce were to conduct a review, re-evaluate and re-examine post-election violence cases pending before court or those under investigation, guide the police on further investigation and undertake prosecution. It was also tasked to recommend to the government on expeditious disposal of the cases. The taskforce had representatives from the police, Justice Ministry, the AG’s office, the Witness Protection Agency and the Directorate of Public Prosecutions.

In Africa, the Kalonzo team stood on solid ground as the African Union had, in January, raised the red flag that the ICC targeted only Africans. Increasingly, the argument that the ICC was a court targeting only Africans was gaining traction. When the ICC issued summonses to Kenyan leaders, Kenya joined four other African countries with cases at The Hague; Sudan, the DRC, Central African Republic (CAR) and

Uganda. Other nations that were under consideration by the court even though no formal proceedings have been launched were also African; Guinea and Cote d'Ivoire.

The United Nations Security Council (UNSC) had also referred Muammar Gaddafi's Government to the ICC. Although Sudan and Libya were not parties to the Rome Statute that had established the ICC, there were provisions that allowed for the referral of cases to the Court by the UN Security Council. Africa had 31 countries then as signatories to the ICC out of 114 worldwide, and it formed the largest bloc of nations. An African, Sudan's President Omar al-Bashir had been the first sitting Head of State to be sought by the court over crimes against humanity and genocide in Darfur. Three years down the line, Bashir had successfully been re-elected as president and had consistently dismissed the arrest warrants with disdain.

The fact that all the cases the ICC was handling were of African leaders was openly discussed with accusations that the court was a neo-colonial extension to African states with racist designs; a slap in the face for African states that had supported the establishment of the ICC. The support to the ICC had gone as far as the governments of Uganda, DRC and CAR referring cases to the ICC before they realised it was a "racist" court, they said. However, the ultimate decision on the referrals would be made by the five permanent member states of the UN Security Council, the USA, UK, France, China and Russia. Non-permanent members included India, Portugal, Lebanon, South Africa, Nigeria and Brazil.

Uhuru Kenyatta and William Ruto received a heroes' welcome on their arrival back to Kenya after they appeared in court for the first time. They addressed a mammoth crowd at Uhuru Park in calling on Kenyans to embrace unity and reconciliation ahead of the elections.

Reaching out to women journalists from vernacular radio stations

On 4th-5th November 2010, Julie Gichuru and I led a media workshop attended by 36 women media practitioners from vernacular radio stations organised in partnership with the Association of Media Women in Kenya (AMWIK) and Media Council of Kenya (MCK) working with vernacular radio stations. The question, was, how could

we use the vernacular radio stations for the good of communities and ensure that they did not divide people?

We had been having a conversation on vernacular radio stations which had become increasing popular over the years for a long time with the MCK. They had been credited with awakening the rural areas in a way that the mainstream media had not ever done. The stations were very efficient at ensuring that people at the grass roots directly addressed their leaders in talk shows and other interactive programmes. Many were also well liked because they featured development stories that helped people make informed choices. There was no doubt that the vernacular radio stations had filled a gap particularly in the rural areas.

The women journalists talked about the difficulties in getting society to cohere, the need for them to be national yet local. We discussed the challenges women in the media face at length. Male dominance in the media, the women journalists said, led to relegation of issues affecting women to the periphery.

The workshop addressed how the media could tackle cultural practices that promoted ethnicism. How were women to succeed when individuals who have access to information and ideas sold ethnicism and patriarchy to society? Would women journalists help to change the focus of news from politics to national unity, pluralism and development?

The three organisations AMWIK, NCIC and the MCK would provide training programmes to female journalists to equip them with the skills and knowledge to question some of the decisions made internally in their media houses. They also needed skills in manoeuvring their way through the male-dominated media houses to sell the cohesion agenda. The journalists agreed to transmit more information about women who are role models in the society against ethnicism in all sectors such as academic, economic, political and religious. We told the women journalists they had the power and ability to ensure that gender and cohesion were mainstreamed in the media.

PART V:
IN SEARCH OF KENYA'S SOUL



Chapter 19

Mediation in North Eastern

Thousands of people have been killed in Northern Kenya and no action has been taken. In your Kenya, when 1,300 people were killed, you formed so many Commissions. Why should we trust you? Do you people of Kenya care whether we Northerners live or die?

– Anonymous Old man in Isiolo

After the referendum, we divided ourselves as NCIC commissioners into three groups and began to identify areas in which we could mediate conflicts between communities. I belonged in a group with two other commissioners, the chairman, Dr Mzalendo Kibunjia, and Commissioner Halakhe Waqo. We were assigned northern and upper eastern regions, the most marginalised parts of the country. The three of us had experience of working in the North. Halakhe was born and had worked there extensively. Dr Kibunjia had also worked there in his previous work at the National Museums of Kenya. I had worked on human rights education initiatives in the North. We all had the requisite understanding of the challenge that awaited us but more importantly, we knew the region and the history of the people. To work in Kenya's North requires not just an understanding of the cruel hand that history has handed the people there, but also genuine empathy for their concerns.

We knew from experience that the people from the northern region did not have a sense of common destiny with the rest of the country. Talk about national cohesion and integration did not resonate well with them. The common question they always asked people from other parts of the country is: 'How is Kenya?' We would be asked this question several times and at every place we went. The region was marginalised and almost inaccessible. Getting to Mandera, Marsabit, Moyale and Wajir was a logistical challenge.

Even the Akiwumi Commission had not visited the North reporting that:

“Because of the insufficient time at the disposal of the Judicial Commission, we were unable to go to the North Eastern and the Eastern Provinces to hear evidence about the tribal or clan clashes that took place in these parts of the country from 1991 to July 1998 when the Judicial Commission was established. We were, however, able to hear at Nairobi, the evidence of two witnesses about the clashes in these Provinces...”

Geographically, economically and socially, it can be said that these Provinces are a neglected region with no roads, few schools, and ill-equipped hospitals and is of little economic significance. The main economic activity in the region is livestock rearing. The pastoralist communities that live in the region keep large herds of cattle, goats, camels and some donkeys.

However, livestock industry, because of drought and high levels of banditry, is becoming less dependable as a means of livelihood. Cattle rustling in the region has been a cultural practice since time immemorial but is no more a sign of bravery or an essential part of the initiation of boys to manhood. The seemingly unstoppable influx of firearms and ammunition into the region from neighbouring Ethiopia and unruly Somalia, had not only, revolutionised violent procedures, but had also, made banditry a common place occurrence. All this in turn, has also made the inhabitants in the region trigger happy and far from peaceful.”

Our first visit was to solve a Borana/Burji conflict; triggered by a single isolated case of alleged assault of a 17-year-old Borana girl. The conflict had resulted in dozens of injuries, looting and deaths. We moved fast to meet elders on both sides and bring perpetrators to justice, which helped to resolve the dispute. Our fear was that the violence could spread to other areas in the North, as there were so many issues that could trigger violence.

During our visits to the region, intense localised conflict was happening, the people told us, due to resource constraints, politics and boundaries. Each community, clan and family bore its own narrative, felt its own pain and was reluctant to accommodate contrary views, except that which justified their own. Many of these narratives were

strongly grounded in oral history handed down by grandparents to grandchildren and reinforced by the parents' activities.

What our team found was what we had expected. Travelling to the North always felt like stepping back into the last century because of neglect and discrimination by successive administrations, first by the colonial British regime and then, after independence in 1963, by the African Kenyan governments.

Weapons were accessible across the borders of warring neighbours.²⁰³ Competition for water and grazing pasture was rife with communities staking grazing lands or water points as their own despite the absence of demarcation.

Livestock rustling, a cultural practice long taken to be an act of bravery that men should undertake to prove their manhood continued with disastrous consequences for all communities as a result of the use of guns. The area was difficult to administer due to the lack of motorable roads and other infrastructure. The instability in Somalia, Northern Uganda, Southern Sudan and the Southern part of Ethiopia (that houses the Oromo Liberation Front – OLF) had a negative impact on Northern Kenya. All communities crossed the borders at will in search of pasture, and in case of an attack, supported their kin across the borders.

Disarmament had been carried out but illicit arms are easily replenished through the open borders. There were poor governance enforcement strategies to enhance the rule of law and Government response to ethnic conflicts had been particularly heavy-handed.

* * *

Some of the worst cases documented by the TJRC of the atrocities of the state against its citizens occurred in North Eastern province.

Many Kenyans not from the North know little of the North. The indifference partly comes from the isolation by successive governments of North and Upper Eastern areas as 'a closed area' during the colonial times and as a theatre of the 'Shifta Wars' in subsequent years. Years before, I had been no exception to this mind-set, knowing little of the North. More than a decade before joining NCIC, I had been in a human rights team traveling all over North Eastern Province. After

hours of driving, we had a puncture and stopped next to some signs of human habitation to fix it. A small group of people gathered around us as we changed the tire. Engaging them in conversation we asked,

“What is the name of this place?”

“Modgashe,” they said.

We froze – and then timidly asked again, “What did you say?”

“Mooodddggashe,” they chorused back.

Exchanging furtive looks, we quickly got into the car and sped off. We thought we were in Mogadishu, in Somalia. Modogashe is a town in Kenya. We had never heard of it, yet it is on the Kenyan map we were taught with in School.

The communities of the North compete for resources such as water and pasture especially in the drought season. They also compete for political representation resulting in violent conflicts. The prevalent feeling by the people from the rest of Kenya that conflict was part and parcel of the Northern and Upper part of Kenya was only broken by the PEV of 2007 and 2008 during which time the safest place to be in Kenya was Northern and Eastern Kenya. The isolation provided space for the Cushitic people to develop social structures and in-built conflict prevention mechanisms.

As we mediated in Northern Kenya, violence broke out in Lower Eastern between the Tharaka and Tigania sub-ethnic groups of the Ameru community, blamed on fears that the new Constitution would, in the creation of counties prioritise some areas over others. The violence intensified and there were urgent calls for help from the local political leadership.

The Tharaka/Tigania Conflict

On 10th June 2010, our team left for Meru region to investigate the root causes of the conflict between the Tharaka and Tigania ethnic communities. We also had a research assistant with us named Godwin Chepkurgor. Chepkurgor had an interesting past and his name was at the time well known to many Kenyans. He was a former councillor from Nakuru. However, that was not what had made him famous. He was famous because in 2002, he had offered some cows and goats to Bill and Hillary Clinton in exchange for the hand of their daughter in

marriage. He was teased a lot in the office about his love for Chelsea Clinton. Many people thought he was joking, but he was not.

On many occasions, he told us that he really believed that Chelsea Clinton would have responded positively to his overtures if he had found a physical way of transporting a few of the cows and goats to the USA; that would have indicated his seriousness in his intentions to marry her. He had however married someone else and moved on with his life. He told me. "I don't know what it is about Chelsea but I just liked her." His fellow NCIC researchers had nicknamed him "Chelsea" and teased him mercilessly. Hillary Clinton wrote about him in her book *Hard Choices*.

After many more questions about the choices facing Africa's people, Zakaria turned to a lighter topic. Five years earlier a Kenyan city councilman had written Bill a letter offering forty goats and twenty cows in exchange for our daughter's hand in marriage. As I prepared to return to Nairobi, he made a stir in the local press by announcing that the offer was still on the table. To the delight of the crowd, Zakaria wanted to know what I thought of the proposal. I paused. I'd answered a lot of questions all over the world, but this was a first. "Well, my daughter is her own person. She's very independent," I said. "So I will convey this very kind offer." The students laughed and applauded.²⁰⁴

Chepkurgor was a really good writer and on one occasion during one of our team building workshops, penned a story within minutes titled "*My Mother's Kitchen*". The story covered the themes of identity and belonging and was so rich in imagery that we applauded him after he read it out to us. He also occasionally penned opinion pieces for the national dailies.

Sadly, Chepkurgor was to later lose his life while photographing a group of elephants in Ol-Debes village in Mogotio, Baringo County. One of the elephants sneaked up from behind, chased and crushed him.²⁰⁵

The Tharaka and Tigania are sub-ethnic communities of what is referred to as the Ameru. The other Ameru sub-tribes include the Igembe, Imenti, Igoji, and Chuka. Both the Tharaka and Tigania are farmers, rearing livestock and cultivating crops. Land is therefore very

important to the two communities and had often been touted as the reason behind the deadly violence that had claimed many Tigania and Tharaka lives.

The Tharaka/Tigania conflicts were based on old differences and had begun many generations before. The conflicts had intensified with the introduction of mapped boundaries and morphed into fights over land demarcation and ownership. The violent conflicts intensified in the mid-eighties. There was a particularly well-reported ethnic clash in 1995 involving the deaths of dozens of people on both sides with politicians allegedly fuelling the conflict. The conflict, if not checked, had all the ingredients of a mini-genocide with each side determined to kill the other off.

The violence between the two communities was extremely vicious. The weapon of choice was the machete (*panga*). There was also a worrying phenomenon, that the locals called “death by text message (SMS)”. This would involve any of the community members sending a text to his fellow ethnic community member, usually a close relative with the message that: “I hear so and so is messing with our land, or has shifted the boundaries. I am held up in Nairobi, pick up a machete and cut him up for me.” This would be executed. In Embu, which was our first stop, the Provincial Administrators told us that the Tharaka and Tigania communities were fighting over administrative and land boundaries. There had been unsuccessful efforts to build peace by local leaders and therefore our coming in was opportune.

The following day when we arrived in Meru town, the Regional DC, Mr Joseph Kimiywi told us that the main issues that were behind the conflict were boundary disputes, land adjudication and issuance of title deeds, and divisive political leaders. There had been local initiatives, he told us to try and end the violence. Bishop Lawi Imathiu led one of these efforts. They had not succeeded, as they needed financial and moral support. DPCs existed but they did not have sufficient funding from the Government.

The local Njuri Ncheke Council of Elders wanted to support the peace process but the DPCs did not accommodate them in a leadership position. The DPCs felt that the Njuri Ncheke wanted to take over the process, and in so doing, kill the concept of inclusion that the DPCs

provided. This did not augur well for the peace process, considering that the Njuri Ncheke were councils of elected male elders that had governed the Meru since the 17th century charged with administering traditional justice that included settling disputes, making and executing community laws and inter-generational custodians of traditional culture.

The Njuri Ncheke was and is powerful and its membership represented the highest social rank that a Meru man could aspire to. In addition to the Tharaka-Tigania conflict, there were many more looming conflicts, including one that pitted the Tharaka and Chuka, Imenti and Igembe over the proposed counties as envisaged in the Harmonised Draft Constitution. We began our dialogue meetings at Miira Primary School with the opinion leaders of mainly the Tigania although there were people from the Tharaka community as well. Both men and women attended.

As in all the meetings we convened, a prayer was said at the beginning. Over the years, working with communities in conflict all over Africa, I have always been bemused and struck by how prayerful they are. Even enemies will start a meeting with prayer for good deliberations. The content of the prayer is usually quickly forgotten as the meeting heats up but it makes for a good reference point to calm the meeting. This particular meeting began with a prayer from Father Zachary from the local Catholic Church.

The DC of Tharaka North was there with his entire security team and the Njuri Ncheke elders. The DC said that the government was working hard to solve the problems in the area. Title deeds were soon to be issued, a big peace meeting would soon be held even as smaller meetings went on. Dr Kibunjia spoke of the need for communities to live in peace and harmony and work together to foster peace in the region and in the country.

When it was my turn to speak, I gave reasons for the establishment of the NCIC, stressing that Kenyans needed to guard against all forms of conflicts that would plunge it into turmoil. I gave examples of Rwanda and Somalia that had been devastated by ethnic conflicts. I told them that everybody had the duty to stop and eliminate all forms of ethnic violence; not only to: *“poesha moto, lakini zima moto kabisa”* – put off the fire completely not temporarily.

Being in the midst of working to set up the Uwiano Platform for Peace, I did not forget to remind them that the forthcoming Constitutional Referendum should not bring conflicts but instead presented an opportunity to unite the country. Specifically, as in all meetings I went to, I spoke directly to the women, in a separate meeting to hear their specific issues and encouraging them to be the vessels and ambassadors of peace in the community.

Halakhe Waqo asked that all communities involved in the conflict must understand that they all enjoyed equal rights and privileges. He said it was against the law to discriminate against any citizen on the basis of race, religion or ethnicity and extolled all citizens to prevent all forms of conflicts. He exhorted the local residents to support the peace committees in the area. Halakhe also asked the people in the room to be truthful and frank so that we could help them find a solution. We decided on the method of contributing to the meeting. For everyone from Tigania who spoke, a person from Tharaka had to speak too and vice versa. Everyone who spoke had to give us not only problems but also suggest a solution. In conflict situations, it is usually the case that the person who has the problem has an answer to what could alleviate it.

The youth leader from Tigania spoke of the idleness of the youth and lack of social spaces to interact, as a cause of the conflict. The youth leader from Tharaka, who said he came from the main hot spot where the recent violence occurred, said that the truth was that, frequent conflicts between the Tharaka and Tigania are historical. Other reasons given were on the partiality of government officers, overlapping of locations and boundaries, lack of participation and inclusivity in major decision making, especially in the creation of administrative boundaries and in development priorities and unfairness of police officers at the Thangatha camp. Solutions offered included, joint peace committees between the warring communities, impartiality by land adjudicators and government officers, proper archiving of land data and records and prompt issuance of land titles. If local people were used to identify boundaries and political leaders desisted from inciting communities, all would be well.

A woman leader from Tharaka thought the conflicts stemmed from idle youth and the effect of chewing khat (*miraa*) that is widely grown in the region. She suggested unconditional forgiveness for everyone. Yet another woman leader from Tigania said the conflicts were caused by poor land demarcation, overlapping boundaries, and inaction by the government when conflicts happen, impartiality in the discharge of duty by the police and continuous revenge attacks by the communities on each other. She reminded the government officers in the room, particularly the police, of their duty to provide security. She also urged that those who benefit from the proceeds of the conflicts, incitement and hate speech to be arrested.

The elders spoke next, the first, a man from Tharaka. He traced the problems to 1994-95 when boundaries were created. The overlapping of boundaries, the hiving of what became Meru National Park from land that previously belonged to the Tharaka who were displaced without compensation was the problem. He spoke with bitterness of the seven schools belonging to the Tharaka that were burnt in the 1997 conflict. The establishment of police posts did not help, as they gave their services partially. He suggested that the only way out was truthful and honest leaders. The elder from Tigania said that the unfinished land adjudication was the problem. The solution was to complete it and give people title deeds as well as discourage youths from engaging in conflicts.

There were two religious leaders, Muslim and Christian. The Sheikh stressed that all religions required people to peacefully coexist. He begged the Tharaka and Tigania to coexist. The Catholic priest faulted the naming of places by an ethnic group's name, saying the people of Tigania felt uncomfortable being referred to as residents of Tharaka. He urged the two warring communities to resolve their problems amicably.

Having listened, we assured them that we would work towards solving the issues raised. We proceeded to Kirundi market and on the way; I was struck by the terrible state of infrastructure in the region. The common narrative throughout Kenya was that the Meru people were beneficiaries of the largesse of Government in terms of good roads, electricity and water. The roads were in a terrible state, no tarmac

and very dusty. There were no bridges and we had to get out and wade through rivers as the drivers of the vehicles drove on rivers that had no bridges. The main means of transport were Land Rovers as few vehicles could survive the roads.

In Kirundi, the Acting DC was waiting for us with a crowd of people from Tharaka and Tigania communities. The DC began the meeting by assuring NCIC that security had improved in the area and he asked the people to maintain the peace.

When it was my turn to speak, I explained the genesis of the NCIC and the progress it had made so far. I explained that its key mandate was to promote peace and harmony in the country and emphasised that women played a key role in this and urged them (women) to actively participate in the processes. The Tharaka and Tigania communities expressed the same concerns that had been raised before at Miira. We agreed that we would meet all opinion leaders from the Tharaka and Tigania at Thiiri centre, under the chairmanship of retired Archbishop Lawi Imathiu, a man highly respected as a peace builder.

* * *

At Thiiri centre, the meeting started with prayers by a pastor from Tharaka and a Sheikh from Tigania. Archbishop Imathiu set off the discussion and cited poor infrastructure as the main reason for conflict in the region. He asked the NCIC to consult the local community members and leaders in the process of land adjudication and boundary demarcation to end conflict.

The first speaker, from Tigania said land adjudication and the issuance of title deeds had to be hastened. The Sheikh asked all the faiths to preach peace. Every speaker focused on peace building at the grassroots. Other practical concerns that needed to be addressed included, training of people sitting in DPCs to solve conflicts, and protecting government projects against vandalism.

A youth leader from Tigania asked that those displaced during land conflicts be compensated or supported to return to their land. He challenged the authorities to support the youth through the *Kazi Kwa Vijana* initiative.²⁰⁶ His counterpart from Tharaka accused the local chiefs of working with MPs to cause conflict.

The elders spoke next with the one from Tigania asking that the boundary question be resolved once and for all. An elder from Tharaka agreed with him, saying the boundaries ought to be properly demarcated.

The DC explained that the police ought to be fair to everyone. He said money for land adjudication that was scheduled to begin in July 2010 had been allocated. He also took a swipe at those who had been speaking about idle youth, telling them that they should take their children to school and away from the khat (*miraa*) farms where they were earning a lot of money. The illiterate youth were responsible for a lot of violence.

We finally agreed on a number of issues. Since the locals did not believe that the land adjudication exercise and issuance of title deeds would take place because of earlier failed promises, we would come back to kick start the process. Many of those speaking had brought written submissions and maps that we later handed over to the IIBRC.

Bishop Lawi Imathiu had already set up a peace initiative, the Peace and Reconciliation Committee. We provided him with technical support to conduct conflict analysis and hold dialogues in the areas and went back often to support him. It worked. Bishop Imathiu became and remains the first point of reference for peace initiatives, not just for the two warring communities, but also for the larger Meru region. The Tharaka and Tigania people remained at peace until the end of our term as Commissioners. The conflicts between the two proved that often, it is often the failure by the government to identify local capacities such as Bishop Imathiu to resolve conflicts that complicates issues.

Chapter 20

Revisiting the process milestones

The Commission shall monitor and review all legislation and all administrative acts relating to or having implications for ethnic or race relations and equal opportunities and, from time to time, prepare and submit to the Government proposals for revision of such legislation and administrative acts.

– **National Cohesion and Integration Act No. 12 of 2008, 25 (2) (m)**

As early as July 2009, minority communities had threatened to boycott the census exercise. They wanted to be treated independently in the exercise and be given their own codes. They included the Ndorobo, Terik, Njemps and Ogiek of the Rift Valley and the Galjeel, Malakote and Wanyoyaya (see Annex 6 for a complete list of Kenyan ethnic and racial communities).

2009 Census Results: Controversy behind the numbers

On 31st August 2010, results of the census were released as *The 2009 Kenya Population and Housing Census*, the Government of Kenya official record of Kenyan Ethnic and Racial communities (Annex 7). Figures from eight districts, all from Northern Kenya were held back as flawed. The affected districts were, Turkana Central, Turkana North, Turkana South, Lagdera, Wajir East, Mandera Central, Mandera East and Mandera West. The North, again, had gotten the short end of the stick. One of the reasons the Minister for Planning Wycliffe Oparanya offered for nullifying the results was that the reported growth rate in the region was higher than the projected population. There had been increases in population not attributed to births from the locals. The two main communities affected by the nullification were the Somali and Turkana, both pastoralist border communities. As was expected, there was an outcry. Those from the regions in which results were cancelled

said that a plot had been hatched against them to marginalise their communities. They threatened to go to court to challenge the decision.

Despite the census results focusing on social and economic data, useful for development, what many seemed keen on was the census results in terms of ethnic communities. Who had the numbers?²⁰⁷ There were calls from politicians from minority communities, laughable if they were not indicative of the fear of exclusion, to people from their communities to put more effort into giving birth. They took to podiums at every opportunity to ask minorities to get more children to provide the numerical advantage so badly needed in a Kenya where the numbers in the ethnic community were seen as spelling access to representation and therefore power and resources.

The census questionnaire of 24th August 2009 had many items, but the big question was ethnicity. There were people who did not want to declare their ethnic grouping. They wanted to be counted as Kenyan. Others felt that leaving out the ethnic community on the census questionnaire would not solve the problem of ethnicism. Another concern was about pastoralists, with many wondering how the enumerators would find and count them.

Internally Displaced Persons (IDPs)

Beyond the ethnic community, the other big issue was the refusal of IDPs in camps in the Rift Valley to be counted.²⁰⁸ IDP camps continued to exist. Many IDPs had refused to return home for fear of renewed violence and preferred to be resettled or to be compensated for their losses. In the absence of guaranteed security, the experiences of returnee IDPs had been largely unsuccessful. Ethnic tensions remained high between the IDPs and the communities they had settled amongst. The IDPs' figures had increased and profiling needed to be urgently addressed.

The plans to resettle internally displaced persons kept getting stuck. Despite the government buying land and repeatedly insisting that all IDPs would be resettled shortly, hurdles kept coming up. One of the cases NCIC got involved in was the Rose Farm in Mau Narok. About 850 families were to be resettled on the 2,400-acre land bought from a European farmer. The Maasai community immediately laid claim to

the land, saying that the colonial government had taken it from their parents.

The government stood its ground, saying the land was bought legally, but as soon as surveyors from the Ministry of Lands went to subdivide the land, Maasai youth, wielding clubs and spears chased them away. A meeting with Minister for Heritage William Ole Ntimama, who frequently spoke for the Maasai, Dr Mzalendo Kibunjia, a fellow colleague and myself pointed at something deeper. The IDPs to be resettled were the Kikuyu. “Why can’t they go back to their farms?” Ole Ntimama asked. “Because,” we told him, “many of them witnessed their relatives, mothers, fathers killed in cold blood. After escaping by the skin of their teeth, the last thing they want is to go back to such a traumatising place and would prefer either government compensates or resettles them.”

“Ha!” Ole Ntimama snorted. “The reason we don’t want them”, he said, “is not so much about the land ownership” he told us. “Eight hundred and fifty families can produce a lot of votes for a candidate who is not Maasai. Go and advise the government,” he said, “that if the Kikuyu are brought to Narok, we shall never have peace. We shall hound them until they leave.”

In May, after months of trying, the government finally managed to resettle some IDP families in Trans Nzoia. Local leaders who had vehemently opposed their resettlement called our office and FM stations saying they did not want them there. They quickly backtracked as soon as they realised that the IDPs were not Kikuyu, but came from their own Luhya community. We issued a statement criticising the leaders for balkanising the country. Prime Minister Raila Odinga criticised the leaders for opposing the resettlement of IDPs in Trans Nzoia while Special Programmes Minister Esther Murugi asked the leaders not to politicise the resettlement of the IDPs.²⁰⁹

Other issues

By 15th March, the conflict in the Trans Mara had begun again with 80 houses reported torched in Tarakwet village, as the Maasai and Kipsigis renewed their conflict even as one of our NCIC teams worked to end the violence. DC Albert Mwilita told the NCIC team the resurgence

of animosity arose from a dispute over land – most members of the Maasai community had sold farms to the Kipsigis but were now claiming that they had only leased the lands to them. Meanwhile, in Bartabwa Division, Baringo North, more than 5,000 people were reported to have fled their homes following rampant cattle rustling cases.

On 24th March, 2009 we went to watch as some 2,545 illicit firearms, collected in the mop up exercise were burnt at Uhuru Park. Minister George Saitoti said that despite many efforts and promises to amend the Firearms Act, there had been no success in making possession of an unlicensed gun a capital offense. A new directive was issued, launching a new disarmament campaign, which targeted to recover 60,000 illegal firearms.

IIBRC

On 10th November 2010, the IIBRC's report was published in the media. It proposed the creation of 80 new constituencies. The IIBRC reported that it had been leaked. Many MP complained that IIBRC had not taken their opinions seriously. The Parliamentary Committee on Administration of Justice and Legal Affairs asked the IIBRC to explain how they had arrived at the proposed constituencies. The matter was controversial because constituencies determine not only electoral blocs, but also allocation of and distribution of state resources. Kenya had 210 constituencies before, but the new Constitution had raised the number to 290.

IIBRC issued a statement to explain the criteria used in determining the boundaries and clarify the issues raised. The key criteria were geographical features and urban centres; community interest, historical, economic and cultural ties; and views from the public.

Mr Ligale advised those who felt aggrieved to petition the High Court for review. On that very day, a businessman, John Kimanthi Mwangi, went to court seeking to bar the commission from publishing the list of the constituencies. High court judge Jean Gacheche proceeded to bar the IIBRC from gazetting the new boundaries until the case was heard. Eleven MPs successfully applied for an injunction blocking the gazettment of the new constituencies. The Ilchamus community went to court demanding their own constituency.²¹⁰ On 24th November

2010, Justice Daniel Musinga upheld Lady Justice Gacheche's ruling and reiterated that the Ligale Commission had acted outside of the provisions of the Constitution.²¹¹

Three IIBRC commissioners disagreed publicly with the list issued by their chairman. The Parliamentary Committee on Administration of Justice and Legal Affairs requested NCIC to meet the IIBRC commissioners and arbitrate between them. The chair of the IIBRC said he could not attend the meeting as the matter was already in court. The Parliamentary Committee was also divided on the matter. The issue was further complicated for NCIC and the Parliamentary Committee when the three commissioners who had disagreed with the chair showed up for a meeting with NCIC and the Parliamentary Committee. The IIBRC's mandate was to expire on 27th November 2010, three months after the promulgation of the new Constitution. The row went on even after the expiry of their term, with the list of new constituencies remaining unpublished because the matter was still stuck in the courts. With the mandate expired, the AG remained as the only respondent.

On 30th November 2010 the Cabinet made a decision that the sub-committee handling the implementation of the Constitution meets with the Parliamentary Committee on Administration of Justice and Legal Affairs to find solutions to the matter.²¹² Parliament later endorsed the Bill creating the 80 new electoral units as proposed by the IIBRC. The new constituencies were contained in the IEBC Bill of 2011 that merged the electoral and boundaries commissions creating the Commission that would manage the elections that would be sworn into office on 14th November 2011 with Ahmed Issack Hassan as chair.

NCIC immediately began meeting Hassan and his team, urging them not to create "ethnic zones" in which only one community lived. IEBC began seeking views on boundaries countrywide and once again, the meetings were characterised by acrimony. Disputes were reported in Narok, Changamwe and Kitui, among others.

Kofi Annan review meeting

In early December 2010, Kofi Annan came back to Kenya to assess the progress of reforms made in the implementation of the KNDR

agreements. He convened a conference and 300 participants attended including all Agenda 4 commissions as well as key stakeholders from the government, civil society organisations, religious leaders, the business community, the media and representatives from the international community. It was clear to everyone that the star of the day was Luis Moreno-Ocampo as he spoke firmly on ICC's commitment to justice.

Even as the conference was going on, a new topic was hot in Kenya. WikiLeaks had leaked cables on comments by some American diplomats over Kenya's top leadership. The interest in what the cables said was sharpened by an advance apology from US Secretary of State for African Affairs Johnnie Carson.²¹³ When the cables were eventually out, it emerged that the American Ambassador Michael Ranneberger had described Kenya's entire political class, the President and Prime Minister included, as anti-reformers who had benefited from impunity. The subsequent revelations of cabinet ministers engaging in juicy gossip, bad mouthing their party leaders and each other was a big let-down by people respected across the country, ingratiating themselves to an ambassador.²¹⁴

The politicians were lucky though, that Kenyans' attention was elsewhere as Moreno-Ocampo was hovering over the country like a dark cloud, pregnant with rain. In an opinion piece published in the *Daily Nation* of 5th December 2010, he had described his role as a prosecutor as "a privilege and a responsibility, whose mandate was to end impunity and contribute to the prevention of future crimes."

More worries were presented by a series of grenade attacks, the first of which had killed three policemen in Eastleigh, on 4th December 2010 and the other exploding on Thika Road on 11th December 2010 both in Nairobi. According to the police, the Al-Shabaab militia was behind the attacks.

Chapter 21

Boiling Pot: The Nakuru Peace Process

It sometimes appears individuals from our communities who hold power and privilege cast a perception of collective benefit for the community. That the Kenyatta and Kibaki governments are more construed as Kikuyu governments, with the Kikuyu in their entirety as beneficiaries, much as the Kalenjin are perceived as the collective beneficiaries of the Moi government. When one visits these areas the reality is different! Most members of these communities live in abject poverty; suffer from neglect and face similar challenges to many Kenyans. The privilege that appeared to be extended to them is a preserve of a few of them. For the actions of a few, we stigmatise and vilify these communities as a collective unit.”

– **Hassan Omar**, *Time is ripe to heal Rift Valley wounds*,

Commissioner, KNCHR,

The Standard, **Wednesday, 14th July 2010**

Before colonialism, largely pastoral communities including the Kalenjin, Maasai, Samburu, Pokot and Turkana populated the Rift Valley. European colonial settlement forced these communities to move out of the Rift Valley.²¹⁵ Nakuru became colonial white farmland with Africans from different parts of Kenya brought in as labourers. Many of these labourers came from the Kikuyu, Luo, Kisii and Luhya communities. By the end of 1961, there were about 40,000 Africans in Nakuru town and about 160,000 in the farms. Fifty per cent of the farm labourers were Kikuyu.²¹⁶ The Kalenjin and Maasai were unhappy with the settler population and with other African communities not originally from the Rift Valley who had come to settle there. In time, these differences resulted in particular tensions between the two largest communities, the Kikuyu and the Kalenjin.

The following narratives and a 1961 Annual Report for Nakuru capture these tensions in the following way;

“I knew that there were two possibilities – one that the Rift Valley would be divided free amongst all the tribes, and two, that it would have to be bought... After talking to some more Kikuyu leaders, I began to see the issue more clearly. The Kikuyu were beginning to think that if the Rift Valley was to be divided among the tribes, they would have very little to claim. The Maasai would get whole stretches of it to the west of Kijabe, and the various Kalenjin groups would claim much of the rest. The leaders could see that it would be better politics to settle all the major disputes about political matters first, and then eventually open the Rift Valley to all who could afford to buy it. This was quite openly discussed in these terms in the autumn of 1959.

Out in the rural constituencies were tribesmen like the Kalenjin who feared that in the highlands the Kikuyu were penetrating everywhere and they would be much quickest off the mark when it came to sharing out the formerly white farms ... Many rallies were held like that at the end of October 1961 at Iten. The young warriors of the KADU Youth Wing squatted where they had packed their spears and their vividly quartered shields and chorused the newly-learned slogan *Uburu na Majimbo* ... They had come to listen to their local member, William Murgor, the Parliamentary Secretary to the Ministry of Defence and Internal Security, who leapt on top of a trestle: “Kenyatta has said that the Kikuyu are spread all over the country, but they won’t come here ... I say that, if the Government cannot move the Kikuyu squatters from the Kapsabet forest, we shall have to take steps to do it ... The school opened for the Kikuyu children ... should be closed ... I was insulted by the Kikuyu in the Nakuru meeting ... If Kenyatta orders the Kikuyu in Nakuru to declare war on the rest of the tribes, we are ready for them.”

“Inter-tribal tensions increased markedly as the year wore on. The Kalenjin make no secret of the fact that they are stockpiling native arms against the inevitable day probably after independence, when they will have to fight the Kikuyu and perhaps the Luo for control of their own areas, including the upper and middle Rift. The tribal antipathies are now so great on some farms that the Kalenjin members of the Agricultural Workers Union would refuse to take part in a union strike alongside Kikuyu members and would automatically take the opposite line in any controversy.”

By the time of the reintroduction of multi-party politics in 1991, the Rift Valley was ripe for conflict and tensions simmered below the surface in many of the communities. Multi-party politics signified an end to the single-party rule and posed a threat to President Daniel arap Moi. The Kalenjin felt threatened by the enthusiasm with which the other communities, particularly the Kikuyu and Luo, welcomed multi-party politics. They saw it as a direct affront to the President.

Although the tensions are longstanding, conflict has been mostly provoked by the politicisation of perceptions of economic exploitation, exclusion and unequal access to resources and opportunities. The ideological claim of the Kalenjin, the largest ethnic community in the Rift Valley, is that the migrations of other communities, most notably the Kikuyu, represent 'historical injustices.' This feeling is informed by their perception that the 'migrant' communities, particularly the Kikuyu, favour their own in elections and do not vote for Kalenjin candidates.²¹⁷

The simmering tensions exploded on 29th October 1991 at a farm known as Miteitei in the Tinderet Division, in Nandi District of the Central Rift Valley. The conflict pitted the Nandi, a sub-ethnic community of the Kalenjin, against the Kikuyu, Kamba, Luhya, Kisii and Luo. Since 1991, ethnically driven and politically manipulated violence had recurred every election year in the Central Rift Valley.

In historical terms, the current ethnic conflict in Kenya follows the pattern of forcible alienation and appropriation of land by the colonial and subsequent post-colonial Governments. This, combined with the unequal distribution of resources, the suppression of dissent, and the selective distribution of public positions to ethnic groups allied to those in power, has been a powerful historical driver of conflict.²¹⁸

The belief that public positions bring advantages to the entire ethnic community has encouraged communities to promote and protect their own. Upon appointment, the successful politician is expected to return the favour by protecting his or her ethnic community's interests and distributing the largesse of the office. In the past, this pattern of expectation and behaviour has extended from junior positions to the Presidency and has turned electoral politics into an ethnic, rather than an issue-based, contestation. It has created political leaders whose key

qualification has been their ability to champion ethnic interest and these ethnic champions have provided a continuity factor in the violence within the Rift Valley.

In the case of Central Rift Valley, in which Nakuru fell, another major factor in the persistence of violence had been the steady growth of ethnic militia. In every successive wave of violence, the state had failed to disarm and neutralise the militia. The increase in the numbers of unemployed young people had meant that political and business leaders have had a ready pool of organised gangs of people, easily available for reactivation at every election year.

Persistent attempts by NGOs and religious organisations to bring these conflicts to public attention in the 1990s were met by detentions and arrests of civil society and opposition leaders. These factors and, ultimately, the failure of the state to contain, what the media referred to as, 'politically instigated ethnic clashes' in the Rift Valley, led to the institutionalisation of violence as part of the political culture and a persistent feature of all elections between 1992 and 2007.

More recent analysis had situated Nakuru as a town with carefully balanced ethnic interests creating a dilemma on how the new county government would be governed.

Conflict in Nakuru in the aftermath of the 2007 General Elections

As the PEV conflict raged, one of the notorious theatres of violence was Nakuru. CIPEV had established that the main reason for violence in Nakuru after the 2007 elections was the ethnic tension and reaction to the perceived rigging of the polls.

The Commission was able to establish that much of the violence in Nakuru in late December 2007 and early January 2008 was the culmination of ethnic tensions built up during the electoral campaign and a reaction to perceived attempts to rig elections. Commission witnesses were unanimous in acknowledging that tension started building up in Nakuru town well before the elections, and that the announcement of the results for the presidential elections was preceded by a lot of anxiety among members of the public. A succession of isolated criminal incidences before and after the elections, and the inadequate

police response to these incidents contributed to the increasing tension within the district.

The Commission further established that:

Contrary to previous election related ethnic clashes which were mainly confined to rural areas, the December 2007 violence affected urban as well as rural areas of Nakuru District. The DC, Wilson Wanyanga, told the Commission that on 28th December 2007, a day after the elections, incidents of violence involving eviction of Kikuyu and Kisii farmers were reported from the Rongai division, particularly in the areas of Kambi ya Moto and Rongai location, prompting the DSIC to call an emergency meeting on 29th December 2007. On the evening of 29th December 2007, the Kalenjin started burning houses belonging to the Kikuyu and Kisii and chasing away members of the two communities. Some Kikuyu and Kisii left their houses out of fear before they were burnt.

It also established that;

Members of the Kikuyu community were enraged by stories of fleeing Kikuyu IDPs and influential Kikuyu business people allegedly held meetings to raise funds for attacks against the Luo, Luhya and Kalenjin communities. During this period of a tense and uneasy calm, a member of the Kalenjin community was killed and to avenge his death, Kalenjin youths from Kaptembwa and Kwa Rhoda areas attacked Githima Estate – mainly inhabited by Kikuyu on 24th January 2008, torched their houses and stole property.

Kikuyu militias supported by members of the outlawed Mungiki sect and angry displaced Kikuyu youth armed with new *pangas*, knives and petrol bombs were assembled and deployed to various estates – Kaptembwa, Kwa Rhoda, Mwariki, Free Area and Kiti to flush out ‘enemy’ communities...The Kalenjin community living around Nakuru, who had already been mobilised and reportedly paid to fight the Kikuyu, retaliated immediately by attacking the Kikuyu dominated areas of Kaptembwa, Mwariki and Githima where they burnt houses, business premises and also killed a number of people.

According to Commission witnesses, the estates of Kaptembwa, Free Area, Kiti and Githima were the hardest hit by this violence which lasted from 24th to 27th January 2008, while Kiamunyi, a

middle and upper income neighbourhood was unaffected. The Commission heard that in one night alone, the 26th January 2008, 48 people were killed in the aforementioned estates in Nakuru.

A report on the violence published by KNCHR in 2009 also attributed the violence to tensions after the presidential election outcome, which was perceived to have been rigged.

It described the situation in Nakuru during the violence as follows:

In Nakuru town, tension started rising on 28th December 2007, when Orange Democratic Movement (ODM), supporters stormed the Nakuru Town Council, which was the tallying station for Nakuru town. They demanded the release of the presidential results. On 29th December 2007, violence erupted in the residential estates when Luo ODM supporters in Panda Mali took to the streets demanding the release of presidential results. They were met by the ODM parliamentary candidate, Mike Brawan who urged them to continue with the protests. The youths started stoning vehicles and businesses belonging to the Kikuyu.

An uneasy calm returned on 2nd January 2008 but a fresh orgy of violence erupted on 25th January 2008. Members of the Kikuyu community were enraged by the stories of brutality told by Kikuyu and Kisii IDPs who were flocking the town in multitudes after fleeing from the escalating violence in the countryside.

The KNCHR investigating team heard that local leaders and influential business people in the town began holding meetings and raising funds for revenge attacks against the Luo, Luhya and Kalenjin communities. Kikuyu organised groups were assembled and deployed to the estates to flush out the enemy communities. Contingents of Kikuyu youths armed with new pangas, knives, petrol bombs and other crude weapons viciously attacked their enemies leading to numerous deaths and fatal injuries. Luo men were rounded up and forcefully circumcised using *pangas* and broken bottles.

Those who resisted were beheaded. The investigating team was told that the Kikuyu organised gangs comprised members of the outlawed Mungiki sect and angry youths who had fled to the town from the violence in the countryside. The Kalenjin living around Nakuru immediately retaliated and attacked Kikuyu

strongholds of Kaptembwa, Mwariki and Githima where they burnt houses and premises and killed several people.

The KNCHR team heard that the Kalenjin raiders had been mobilised and paid to fight the Kikuyu. The police were overwhelmed by the sheer numbers of the marauding gangs and the army was called in to assist. By the time the violence came to a halt, more than 100 people had died, and thousands displaced from their homes. According to the Human Rights Watch, the Rift Valley Provincial Hospital morgue reported 56 deaths, while the municipal morgue recorded 105 deaths since the beginning of the revenge attacks on 25th January 2008, an official total of 161 for Nakuru district alone.

* * *

The NCIC decided that a focus on reconciliation among the main protagonists of the 2007-2008 violence in the Rift Valley's Nakuru would be a priority.

Despite the pledge by the coalition Government, the process of healing in the Rift Valley and across Kenya had not started until in 2010. The TJRC, for example, had not yet visited Nakuru. Many FBOs were preaching forgiveness, but it was clear that Nakuru required more than this. The issues that had, for many years, simmered beneath the surface needed to be addressed through discussions. Solutions needed to be found.

I approached the leadership in NCIC to initiate the Nakuru Peace Process. I then booked an appointment with SK Maina, coordinator of NSC and my fellow co-chair of Uwiano with the NCIC Chairman. We met Mr Maina and discussed how best to work in Nakuru. Another cycle of violence seemed likely to occur in the then forthcoming 2013 general elections, hence it was critical to prevent it.

Nakuru town is of key strategic importance to Kenya. It is one of Kenya's fastest growing towns and lies at the centre of the Rift Valley, one of Kenya's most important agricultural areas. All the successive Presidents of Kenya, Jomo Kenyatta, Daniel arap Moi and Mwai Kibaki have business interests in Nakuru County. One of them, former President Moi lives there.

The demographic balance of ethnic communities in electoral constituencies is a powerful factor in the contestation of Kenyan elections. Political campaign strategies are often couched in the language of ethnic blocs ('them' versus 'us') and Nakuru is no exception. In the 2007 General Elections, a total of 657,219 registered voters cast their votes in the six constituencies of Nakuru County (Naivasha, Nakuru Town, Subukia, Kuresoi, Molo and Rongai). PNU won four of the seats, with the remaining seats going to ODM. The PNU winners included John Mututho (Naivasha), Lee Kinyanjui (Nakuru Town), Nelson Gaichuhie (Subukia) and Joseph Kiuna (Molo). They were all Kikuyu. Zachary Cheruiyot (Kuresoi) and Lukas Kigen (Rongai) of the ODM, both Kalenjin MPs won two seats. There was overwhelming support of the Kikuyu for the PNU and Mwai Kibaki, incumbent President, and Kalenjin support for the ODM and the main opponent, Raila Odinga, a Luo.

This dynamic is consistent across the previous General Elections. In 1992, violence erupted in the Rift Valley before and after the elections, as there was a perception that the Kikuyu would and had not voted for the Kalenjin incumbent, Daniel arap Moi. In 1997, the same scenario prevailed, as President Moi was defending his seat, contributing to the recurrence of violence. In 2002, when the outgoing President Moi supported a Kikuyu candidate, Uhuru Kenyatta, against a fellow Kikuyu candidate Mwai Kibaki, the violence reduced significantly.

Ethnic based conflict in Nakuru County is fuelled by among other reasons competing interests for land in a context of high population growth, and economic insecurity and disparities. Historically, the colonialists had occupied fertile parts of much of Nakuru. Many pastoralist communities, including the sub-communities of the Kalenjin such as the Kipsigis, and the Kisii, the Nandi and also the Maasai, who had owned much of the vast lands in the Rift Valley, were pushed to the periphery.²¹⁹

In the post-independence period, the Kenyatta Government settled a significant number of the Kikuyu agriculturalists through land-buying companies in areas that had been vacated by the colonialists. Many of the Kalenjin also sold land to the Kikuyu. The Kikuyu, in what the Kalenjin saw as an eerie repetition of the colonial experience, employed

Kalenjin young people on their farms and renamed the places they lived with Kikuyu names.

By 2010, new political developments, including enactment of the Constitution and the indictment of leaders by the International Criminal Court (ICC) for fuelling PEV, reframed the historic tensions between the Kikuyu and Kalenjin.

The 2010 Constitution provides a strong basis for coexistence and positive ethnic relations. It also devolved administrative and political structures. For some, this threatened to polarise communities, especially, where one ethnic group dominated in a county. In Nakuru, the Kikuyu were dominant, yet historically, the land had belonged to the Kalenjin and Maasai.

The Kalenjin resisted the new Constitution mainly because they were aware it would break up their political dominance of the previous Central Rift Valley Province (of which Nakuru is just a part) and that they would lose Nakuru County to the Kikuyu majority, although the Kalenjin majority would be maintained in the rest of the Central Rift. With the prospect of the 2013 elections looming, the NCIC and NSC felt that violence seemed likely, as the communities with the largest numbers would most likely vote in ‘their own’ triggering violence from the Kalenjin. Nakuru threatened, once again, to be a flash point.

The Kikuyu had their fears as well. They had been displaced from their homes and property destroyed in the violence that preceded four previous elections. Thousands of people had been wounded or died and Kikuyu investors had suffered huge losses. It was felt that peace must prevail in Nakuru County to preserve their property and lives.

* * *

Male elders are critical “ethnic champions” within Kenya’s electoral processes. They constitute informal groupings that bestow blessings on candidates. They wield considerable influence and are expected to protect their communities from any external aggression. The NCIC and NSC recognised the elders as influential peace brokers and essential interlocutors between the militia and the wider population.

Kenya’s first president, Jomo Kenyatta, recognised the unique role played by the Elders in Kenyan society in the following way: What

answer did the African have to the important question of: “What is the State and why should I obey it?” To him the traditional Tribal Council – that occasionally met other Tribal Councils through nominated representatives or in times of war through intermediaries – was at once a Government and an expression of the very personality of each and every citizen. It may be argued by some scholars that the African took no part at all in self-Government, and that Government was run solely by autocratic leaders who imposed their will on their subjects. But people with such qualities of leadership are to be found in many parts of the world, and there is nothing inherently African in this.

The main point is that African leaders invariably had a number of advisers, who were selected by virtue of their logic and reasoning. They in turn elected their spokesmen by popular acclaim. The Elders thus elected were constantly in touch with their families, blood brothers, clans and tribes. In this context, the rulers were to the people what the people were to them. By obeying the Tribal Councils, the people maintained that they obeyed themselves and their true will. The State – and its geographical areas were immaterial – was justified on the grounds that only therein could people find peace and security.

Morton, the biographer of Kenya’s second President, Daniel arap Moi says of the elder community; “In Kalenjin culture, the tribal chief did not have absolute authority; decisions were made after consulting, often for days, with other elders, and action taken only after convincing the rest of the clan to follow the plan in question.”

Elders have been important players in societal events, even though they have been weakened by the modern administration systems. Colonialists were particularly strict in dismantling or appropriating traditional administrative functions and replacing them with a system of provincial administration.²²⁰ However, traditional structures remained active. Politicians and communities constantly seek male elders for advice and they retain a huge influence on governance. If elders endorse an electoral candidate, then he or she is likely to sail through.

During the 2007-2008 violence, while the young men raided and warred, the male elders gave direction, blessings and, importantly, money to fund the violence. When one youth involved in the 2008

violence was asked how the elders participated, he recalled: The elders advised the youth on how to attack and organise people. Some of them ... had intermarried (with the community we were targeting) and they told us how they used to attack. This gave us psyche. They told us that if one was killed during the war, it was a good sign of how he defended the community. This made us value our community and we could do anything for it. So the old men advised us and ensured we had food. In our culture, when people go to war, they do not go back home but feed and stay in the forest. It was rare to meet with your family members.²²¹

The NCIC was also alive to the possibility of Elders playing an important role in conflict resolution and this was also suggested by various reports as indicated in the following account; In Narok, there were brief skirmishes between the Maasai and the Kikuyu on the Bomet-Narok border from 30th December 2007 but this violence fizzled out by 2nd January 2008 after elders from the two communities met and struck a peace deal.

Initially, I had thought that the once chairman of the powerful GEMA,²²² the former Defence Minister Njenga Karume, and the former President, Daniel arap Moi could assist in the peace process. Karume and Moi had previously attempted to foster unity between the communities in the Rift Valley under the auspices of GEMA and KAMATUSA, an ethnic entity consisting of the pastoralist communities of the Kalenjin, Maasai, Turkana and Samburu. Njenga Karume had also with Bishop Lawi Imathiu (whom we had worked with to solve the Tharaka/Tigania crisis) in early 2010, held a meeting in Nakuru to convince IDPs in the Rift Valley, victims of the PEV, who had declared that they would never vote again, to enlist as voters and vote in the 2010 constitutional referendum.

On further reflection, SK Maina recognised the limitations of this strategy and advised me against it. One of the reasons why attempts at dialogue had failed was because of politicians. For this reason, NCIC left out politicians, despite the influence that they wielded in their communities.

However, both the NCIC and the NSC were also conscious that the elders knew they were important and were particularly wary of

commissions, as they had named some of them as planners and instigators of violence. Consequently, the NCIC chose to approach the elders through the Provincial Administration.

This presented a challenge too as the Provincial Administration and the police had also been reported to be not impartial.²²³

The NSC facilitated the partnership with the Provincial Administration and preparatory activities for the Nakuru County peace process. The PC Osman Warfa identified two conveners, Dr Solomon Wanguru for the Kikuyu and Andrew Yatich for the Kalenjin. Yatich was senior in the Kalenjin hierarchy of elders. Dr Wanguru was one of the beneficiaries of the Tom Mboya airlifts to the US in the 1960s that had benefited among others, Barack H Obama Senior, the father of US President Barack H Obama. (Dr. Wanguru later passed four years later) Yatich had worked extensively in peace-building and at the height of the PEV, accompanied Nobel Laureate Prof Wangari Maathai to conflict areas to broker peace. In time, the Kikuyu elders requested that another elder, Muhia Maina, assist Dr Wanguru.

At the time we began the Nakuru County peace process; there was a lot of tension between the Kikuyu and Kalenjin in Nakuru. While the elders could help in brokering peace, they were also disadvantaged. They excluded women and young people, treating them as recipients of 'wisdom' from male elders rather than people with ideas and a stake in the process. Indeed I was the only woman participating in the discussions. However, under the circumstances, the NCIC considered that the elders presented the best, and most logical, entry point for initiating and executing a firmly rooted peace process for Nakuru.

At the NCIC and NSC's request, the provincial administration identified 80 elders – 40 each from the two communities – to participate in the peace process. The elders expressed support for the peace process as most of them had business interests in Nakuru and desired a stable and peaceful environment.

The mediation process

In 2010, attempting to broker peace between the Kalenjin and Kikuyu was clearly one of the most challenging tasks facing the NCIC and NSC. If it succeeded, it would inspire peaceful coexistence and responsible

leadership in other parts of Kenya. In the conflict mapping we had carried out with Uwiano, Nakuru was ripe for an implosion. If violence began in Nakuru, we would not be able to stop its spread throughout the Central Rift and Kenya.

Several efforts to broker peace were already taking place at a local level through community-based and faith-based initiatives, but there was nothing at the national level. More importantly, there were no attempts to bring together the two most powerful communities: the Kikuyu and the Kalenjin. The two communities were the protagonists in Kenya's traditional hot spot of electoral violence.

The NCIC and NSC considered that the Kalenjin and Kikuyu communities needed to be led through a process of acknowledging, recognising and addressing factors that could impede a peaceful election and devolution process. Informing this strategy was the conviction that conflict transformation among Kenya's ethnic groups can only succeed when local communities were encouraged and willing to participate in owning the peace.

The opportunity to understand the issues in Nakuru County presented itself on 18th February 2010. Lucas Kigen, MP for Rongai, alerted NCIC of a looming conflict between the newly settled IDPs and the local community. The Regional DC Amos Gatheca, described tensions between the IDPs and the Kalenjin community. These were confirmed during visits to the Afraha, Lanet, Ingobor, Kapkures and Ogilgei (ALIKO), Minto, Muoroto and Giwa IDP camps. The Kikuyu IDPs had been resettled among the Kalenjin community. He said that out of all the PEV displacements, 6,002 families were unable to return to their original homes and farms for fear of attack.

The ALIKO camp comprised of IDPs who had originally fled the violence into the camps of ALIKO. The IDPs had pooled together the money they were given as compensation by the government and purchased the 3.2 acres of land where they were settled. The camp had IDPs from nine ethnic communities with 729 families of 2,642 persons. They decried the condition of the tents they were living in and the general hygiene of the camp as poor and also complained that they had not been visited by the government agents or provided with any supplies, as they were no longer considered IDPs.

The Minto IDP camp was smaller comprising mainly people from the Kisii community consisting of 78 families. Like the ALIKO camp, the tents were tattered and there were no proper sanitation facilities. The next camp we visited, Muoroto was the smallest of the four camps. It comprised 23 families all members of the Kikuyu community from the Nakuru showground camp. The camp like the previous two also suffered from a state of neglect and the families were living in deplorable conditions. They also complained of government neglect.

Giwa IDP camp was the largest. It comprised 444 families mainly brought in from Mawingu camp in Nyandarua District. They were all from the Kikuyu community. They had been settled on a 1,172-acre piece of land purchased by the government. The government had brought in iron sheets and other building materials and the houses were in the process of being constructed. Every household had a 2.25¼-acre piece of land. It turned out that this was the key bone of contention for the Kalenjin.

During meetings, the Kikuyu IDPs sat on one side of the hall with the Kalenjin on the other side. The IDPs from other communities sat alone too. Neither community spoke to the other. However, they all presented to us the issues that affected them. Land and employment were cited as the main potential cause of future ethnic violence and conflict. The Kalenjin brought out a crucial point. The current method of resettling IDPs was promoting balkanisation. Communities were being resettled without integration of ethnic groups; many of them were on their own. Interestingly, and giving credence to our prioritisation of Nakuru, the first PEV convict was sentenced by a Nakuru Court in 2012, two-and-a-half years later.²²⁴

Towards the end of 2011, the media carried reports of the Rift Valley PC, Osman Warfa, rebuking 30 Kalenjin elders, mainly from Rongai constituency. The elders had said that they would only welcome IDPs who originally lived in the area. The elders had also told the PC “they feared that crime and violence would soar, considering that there are 25,000 squatters who have lived there for ages. However, it emerged that the issue was political, with the dominant Kalenjin fearing that an influx of the Kikuyu might result in the loss of a political seat they had held for years”.²²⁵

Attending a meeting to discuss the draft national policy on IDPs at the Holiday Inn in Nairobi chaired by the then Minister for Special Programmes Dr Naomi Shabaan, I raised the issue of balkanisation, but I could clearly see that the priority of the Ministry then was not the how, but the when. They wanted to resettle as many people as possible in the shortest time possible. NCIC issued a press statement on the matter of balkanisation and wrote to the Ministry of Special Programmes about it.

From April 2011, the NCIC and NSC decided to engage more fully in a peace process bringing together the whole of Nakuru County. I had no idea that the meetings would extend for more than 16 months before a peace agreement was reached. By the time they were complete, the talks had brought in not only 80 Kikuyu and Kalenjin, but a total of twenty male Elders from the Luo, Luhya, Kamba, Giriama, Somali, Turkana and Maasai ethnic communities, bringing the grand total to 100 elders.

The elders selected a technical group composed of eight Kalenjin and eight Kikuyu men to work with us to ensure implementation of the proposals. The technical team would also create links between the DPCs, the elders, NCIC and NSC.

The Peace Accord

After several rounds of meetings, the NCIC and NSC reached a point at which there was a need for technical expertise to draft a peace agreement. The moment was surreal. Former Kalenjin and Kikuyu elders, protagonists in war, were now sitting at the same table, sharing food and even jokes, wondering when they could begin working on a peace agreement.

The Centre for Humanitarian Dialogue (HD) provided the team of experts through its African Director, Meredith Preston-Mcghie. Despite fears by the NCIC and NSC that the elders might see HD as an imposition, they were well received. HD offered something that the NCIC and NSC could and did not: their non-Kenyan staff were seen to have no interests in the Nakuru Peace Process because they had no ethnic affiliation to any community. HD facilitated a process in which the elders contributed to the drafting of the peace agreement.²²⁶

Table 21.1: Kikuyu and Kalenjin Issues

No.	The Kikuyu Issues	The Kalenjin Issues
1	There is imbalance in security employment in the Rift Valley. 70% of the law enforcement officers are from the Kalenjin community.	There are few or no Kalenjin heads of department in Nakuru County especially at the Provincial level, thus representing marginalisation of the community. There is discrimination in promotion of the Kalenjin within the law enforcement authorities i.e. General Police and Administration Police.
2	The Kalenjin should demonstrate good faith in peace processes.	The Government should continue facilitating grassroots' dialogues such as this to gather views from residents on how the communities should co-exist.
3	True peace and reconciliation in the Rift Valley should go beyond temporary political pacts. It is always the Kalenjin who start violence in the Rift Valley as experienced in 1992, 1997 and 2007-2008.	The root cause of conflicts in the Rift Valley is competition for political representation as the Kikuyu community only elect fellow Kikuyu. The Government should put in place mechanisms to address this situation before the next elections. There should be respect based on rights of all communities in the Nakuru. The Kikuyu refer to the Kalenjin in derogatory terms such as "Lumbwa", a term they consider demeaning.
4	All communities in Nakuru should be brought on board and sensitised on the need for peaceful coexistence.	Dialogue fora should initially focus on the Kikuyu and Kalenjin communities before bringing on board other communities.

5	Most Kikuyu involved in this peace process were born and brought up in the Rift Valley and acquired land on a willing-seller-willing-buyer basis. However when the Kalenjin war does not choose between those who bought land but attack the Kikuyu community as a whole.	Most Nakuru land belonged to the Maasai and the Kalenjin. There is historical injustice in relation to land against the Kalenjin.
6	The motive of violence is political and not about land. The Kalenjin have still not settled on most of the land vacated by the Kikuyu IDPs. Why doesn't the violence occur in areas where the Kalenjin have a head start politically?	For there to be peace in Nakuru, distribution of elective seats in the County should not be based on strength of numbers but on negotiated agreement among all communities in the County so that even where the Kalenjin are a minority they stand a chance at leadership.
7	The government should not encourage relocation of people through resettlement of IDPs. IDPs should be resettled in areas where they were evicted from originally.	All IDPs should be compelled to go back to their original homes. Lumping IDPs in some areas is a threat to our political survival, this is particularly so in Rongai where during elections, the winning margin is usually narrow. The process of resettlement is discriminatory in favour of the Kikuyu.
8	The Kalenjin do not like living with other people except among their own people. They are secretive and insincere.	People should integrate with communities where they settle. For example, the Kikuyu settle in areas that they share with other ethnic communities and then they rename the areas with Kikuyu names such as Kiambaa.

9	Other communities should be encouraged to form councils of elders to provide fora for dialogue.	The Kikuyu do not have one council of elders like us. They have formed themselves into multiple groups making it difficult to know the legitimate leadership group. The Kikuyu have also started “ <i>mbuzi-eating</i> ” “goat-eating” caucuses that are raising suspicion.
10	Our youth should not be branded with names such as criminals/Mungiki so as to justify their illegal killings. Those who have been criminals and are now reformed should be empowered by the Government to realise their potential.	Increased unemployment among the youths in the Nakuru poses a threat through mushrooming of organised groups. The Kikuyu are not able to control the youth who have organised themselves into criminal groups. We are able to control our youth not to fight unless it is necessary..
11	Signing a peace accord alone will not usher in a period of relative peace in Nakuru. There is need for sincerity. The agreement must be enforced within the provisions of the law/constitution.	Nakuru County should come up with a peace agreement/declaration to help address conflicts in the region.
12	The Kalenjin have always planned the violence.	There is no pre-planned violence by the Kalenjin community.

In a subsequent meeting, we divided the elders into seven groups and asked them to identify, together, issues that were critical in building a peaceful and harmonious county. This was the first time that the Kikuyu and Kalenjin would sit and talk to each other. Even so, it took a lot of persuasion for them to accept to sit together.

Group	What should be done to create a peaceful, harmonious and prosperous Nakuru county?
Group One	NCIC/NSC facilitation of youth peace initiatives. Stop Government discrimination in resource sharing. Create employment opportunities in accordance with population distribution. Create trust between communities.
Group Two	Build trust in youths by removing labels such as Kalenjin warriors and Mungiki through sports with elders participating.
Group Three	Peaceful County with people working on joint activities. Empowerment of youth with skills. Improve infrastructure. Ensure food security. Ensure social security and political integration.
Group Four	Establish elders' councils formally through the amendment of NCI Act, 2008 similar to the National Youth Council. Ensure rapid response to prevent or stop violent conflicts before citizens take the law into their hands. Have elders appear on radio talk shows, and preach peace, tolerance and the beauty of diversity. Resettle all IDPs through an all-inclusive committee to avoid accusation of bias and discrimination.
Group Five	Work towards a de-ethnicised and gender sensitive Nakuru. Thorough analysis of the causes of conflict. Find out why in the pre-1992 years conflict between communities minimal. Where did the rain start beating us?

Group Six	Be like Tanzania through introduction of “<i>Undugu</i>” (brotherhood) and compulsory greetings such as “<i>Habari ndugu na dada</i>” (how are you brother and sister). Eliminate all forms of derogatory remarks, prejudices and negative perceptions. Encourage continuous dialogue between women, youth and elders. Experience had shown that the active involvement of local communities, youth, women and the elderly is key to building a system of participative governance that in turn is indispensable to advance sustainable development.
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The Nakuru County Peace Accord was finally signed on 19th August 2012. The agreement required a series of immediate actions including meetings among the elders on their own to demonstrate commitment to the peace agreement. It also required them to mobilise the politicians and the youth and sensitise them on the peace accord.

The Elders encountered doubt and suspicion from their communities when they began these meetings. All had not been smooth even as we discussed the Nakuru Peace Accord. IEBC had encountered the simmering ethnic tensions in Nakuru, even as the discussions went on as reported in the media.

“Ethnic differences were evident yesterday during discussions on the proposed electoral boundaries as two communities differed over where the Rongai-Subukia border should be. Jeers and cheers characterised the hearing depending on which group was airing its views before the IEBC sitting at Nakuru’s Old Town hall. One community wanted Waseges location to be in Subukia while the other wanted the area to be in Subukia. Members of the Kalenjin community said most of them lived in Rongai and claimed that leaders in Subukia should have only parts of Waseges inhabited by the Kikuyu. The Kikuyu on the other hand wanted the area to remain in Subukia since it was closer to them.”²²⁷

The doubt and suspicion witnessed by the IEBC convinced us that the hard work involved in 16 months of peace meetings was not over.

The goal of the Nakuru Peace Accord was ensuring that people from all ethnic communities resident in Nakuru lived in harmony. The agreement was divided into five sections; purpose, guiding principles,

actions resulting from dialogue, dispute resolution, and relationships with other processes and institutions. The first paragraph stated the purpose and summarised the agreement as follows;

The purpose of this agreement is to acknowledge the issues between our communities in Nakuru County and to take our share of responsibility for dealing with them – peacefully. Our communities have been protagonists and it is in this respect that we have met to discuss the way forward. We do not seek to exclude other communities and especially we do not seek to exclude the many other groups, businesses, organisations and people who share our lives in Nakuru County. Our focus is on our responsibilities. We do not pretend that the paths will be easy. We do not have all the answers. But we do accept that both communities have had a role in the violence between us and that both communities must have a role in preventing repetition of that violence.

The agreement affirmed the deep historical and socio-economic differences between the two communities. The agreement did not shy away from pointing out discrimination in employment, political arrangements, democratic governance structures, planning, development initiatives and public deliberations. This discrimination had resulted in domination and exclusion.

The agreement delved into the problems created by the failure to bring many perpetrators of the past electoral violence to justice. It exposed the real difficulties faced by victims and perpetrators living side by side. Despite Kenya's aspiration for democracy, the four successive multi-party elections had been held at great cost to life and property. This, the elders said in the agreement, would not happen again. The agreement stated that they would avoid collective ethnic hurt, commission and retaliation.

The agreement spelt out a Code of Conduct where the communities pledged to respect each other's traditions and customs, including dispute resolution mechanisms. They recognised the need for honesty among elders across communities and acknowledged that planning and participating in violence is illegal. They encouraged political leaders and supporters to ensure peaceful political competition and responsible leadership that promoted inclusion and respect for human rights. The Code of Conduct forbade the use of derogatory and insulting language.

The media covered the event with *The Standard* reporting:

“Elders from Kikuyu and Kalenjin communities living in Nakuru County have resolved to work together to promote peace in the forthcoming general elections. Led by Wilson Leitich and Samuel Maigua, the two communities have signed a Nakuru County Peace Accord after 16 months of dialogue and consultation between the two communities and other communities in the county.

The National Cohesion and Integration Commission (NCIC) had led the peace efforts, which culminated into the signing of the Peace Accord in Nakuru (...) The Accord seeks to act as a beacon for all other communities seeking peace in the country. The elders noted that implementation of the Peace Accord was an on-going process and communities should continue participating in the dialogue to build inter-communal trust. Nakuru Town Mayor Mohammed Surow noted that the town was badly hit by the chaos but has experienced heightened growth in the last four years.”²²⁸

Despite the long process it took to reach an agreement, the Elders would later inform the NCIC that the meetings themselves had not been the real test. After months of arguing which community “owned” Nakuru County or whether anyone from any ethnic community could represent everyone, the real test was appearing in public together in a road show organised by the NCIC. Open trucks – flagged off in a ceremony from Nakuru Town by the NCIC, the HD Centre and the Provincial Administration – rolled out all over Nakuru County, carrying the Elders.

Even as we were on board the truck, the deputy mayor told me that people in the local communities were still struggling to take in the fact that the former enemies could speak peace to each other. “Are you sure they are not pretending? Do they really believe what they are saying?” She asked me in disbelief as the elders spoke about the need for peace. They made stopovers in every market place where both Kikuyu and Kalenjin Elders would speak together, side by side, about the benefits of peace. Communities listened in disbelief as their local leaders stood with former “enemies” and spoke to them about the importance of peace.

We worked with the media to promote the peace process. We organised for Kikuyu and Kalenjin elders to hold joint talks on vernacular radio stations, which generated many positive reactions, even from the Kenyan Diaspora. Kenyans could not believe that two previous ethnic rivals could agree to peace, particularly before perpetrators of the PEV were arrested. The statement in the peace agreement that provoked most reactions was one that stated: Our starting point is to apologise to each other. We are deeply sorry for the suffering that each of our communities has inflicted and experienced. That suffering is on-going. But we also express our determination to heal, to learn, to prevent further violence and to build mutual respect between us.

The elders recognised the importance of ensuring that the agreement was not used to consolidate political power or initiate processes that would be at the other community's expense. Consistent joint implementation as well as local relationship and capacity-building to sustain peace and reconciliation would be critical to sustaining the breakthrough of the peace agreement. The elders would also need to constantly engage the Provincial Administration, law enforcement agencies, Commissions such as the NCIC and neutral third parties to ensure support for implementation of the peace agreement and that they did not slide back into their previous state of enmity.

The elders had long expressed the need to visit an elder's council such as the Luo Council of elders or the Njuri Ncheke of the Meru community. They settled on the latter and the Secretary General of the Njuri Ncheke, Silas Ruteere, organised a three-day meeting in August 2012.

* * *

In late 2012, the elders walked Uhuru Kenyatta and William Ruto through the signed agreement and asked them to embrace it as the two were clearly emerging as the leaders of their ethnic communities. They also did the same for all those who were running for elective office in Nakuru County. A key factor that guided the elder's support for the electoral candidates was the candidate's support for the peace process. All the candidates the elders identified for various positions in the County Assembly, Senate and National Assembly were elected. These results demonstrated the powerful influence of the elders.

I learnt a lot of things from the Nakuru Peace Process. For 16 months while we negotiated peace, I was the only woman at the table. The process initially involved 80 Kikuyu and Kalenjin elders. My colleagues from the NCIC and NSC were all male. I sat at the talks in my capacity as an NCIC Commissioner, stung by negative statements directed at women, but refusing to be defensive. In the discussions, the elders presented contradicting images of women as helpless victims, but also as leaders. The Kalenjin had elected the highest number of women to Parliament in previous elections, yet matters of war and peace were perceived to be the affair of male elders.

I did express myself as a woman on one occasion. There was an objection from one of the elders to language in the agreement that women from both sides of the divide had been raped. He argued that the drafters should “use a less sensitive word, ‘rape’ is too strong.” I objected vehemently and the word “rape” was retained. At tea break, one of the elders told me that rape was the ultimate symbol of men’s failure to protect their women, undermining their honour and ethnic perceived strength.

I also learnt that unless women work in positions of authority such as commissioner, judge, police officer or religious leader, they cannot be included in the male elders’ clubs to discuss peace-building. Ten Regional and District Commissioners attended two of the Nakuru meetings, and there was only one woman – Naivasha District Commissioner, Helen Kiilu. Cultural barriers to women’s participation in peace processes are very strong. To ensure the success of the peace agreement, a lot of work still needs to be done in Nakuru on reducing stereotypes of women as victims and men as perpetrators. This means that the elders should stop seeing women as too weak to negotiate peace. These simplified descriptions deny both men and women their agency in either perpetuating or reducing violent conflicts.

When the NCIC and the HD Centre held meetings separately with women opinion leaders, they told us that peace for them meant their children going to school and having access to good medical care.²²⁹ For the men, the dividends of peace were that their businesses did not suffer when there was violent conflict. A woman’s perspective is simply different and is therefore necessary at any meeting discussing peace. I

was very comfortable mediating as the only woman in the room. My male colleagues Dr Mzalendo Kibunjia and Halakhe Waqo had done a good job when we worked in the North in preparing me to sit with men and mediate conflict.

Male elders in the African setting, I have realised, respect knowledge. I prepared adequately for the meetings. I read a lot about the history and politics of the Rift Valley. I empathised, not sympathised, with the positions articulated by all the sides. I met the women separately for advice on the dynamics of the conflict.

The elders came to respect me. I came to know this in many ways. When the first chairperson of the Kalenjin elders, Mr Rotich, who was also a former Mayor of Nakuru died, I was asked to represent NCIC and speak at the funeral. His wife, Alice took me into her house, showed me a bedroom and said to me; namesake, my husband spoke of you often. He said that you possessed exceptional courage; you walked into the lion's den and stayed there. She told me 'this is your bedroom. I do not want you to come to Nakuru and stay in a hotel'. On a recent visit to Nakuru, one of the elders told me that they had referred to me as the "Iron Lady" and "Wangu wa Makeri" a woman who was reputed to have ruled over the Kikuyu with an iron fist, behind my back as the peace process was going on. I took the names as a compliment.

I also came from the Nakuru Peace Process determined that the NCIC, the HD Centre and the NSC must empower women from the local communities to come to the table and ensure that their voices were heard during the negotiations. This would create a wider sense of ownership and contribute to stronger, and more enduring, peace agreements.

Political inclusion as a pre-condition for democracy

Political inclusion is still not a reality in Nakuru. Not all ethnic groups are politically represented. The key focus of the NCIC, NSC and the HD Centre teams was ensuring peaceful relations, which would create the climate for a peaceful election. In retrospect, as the new Constitution did not guarantee a proportional representation system, the agreement relied on the goodwill between communities to elect those not from their own communities. In future, it would be important for the elders to formalise political inclusion and power-sharing agreements. This would have seen seats distributed proportionately among ethnic communities.

Concluding recommendations

The Nakuru Peace Process and agreement presents, in stark terms, the dichotomy of peace versus justice. The process tried to address the question of how to stop the violence while preserving the fragile social harmony by developing a peace agreement. The agreement, therefore, does not emphasise bringing the perpetrators of violence to justice. It leaves that aspect to the findings of the TJRC team and the criminal justice agencies. It focuses instead on measures to ensure peace and stability and the long-term recovery of Nakuru County. In considering the long term, six key elements should be considered:

(a) Disarmament, demobilisation and reintegration

In order to achieve durable peace, the County Government of Nakuru needs to study issues related to the disarmament and disbandment of armed ethnic militia and successful reintegration of the fighters into the society at large. Joint action between the government and the elders, young people, women and local civil society organisations will contribute to the removal of small arms and light weapons.

(b) An integrated approach

The Nakuru County Peace Accord set out an implementation strategy that involved several actors, including the national government, women, young people and elders. These actors should keep the ideals of the peace process in mind and build on tangible achievements, such as the resolution of land disputes, reintegration of internally displaced people, as well as reforms in law enforcement and judicial processes. They need to sustain collaboration and cooperation to secure a lasting peace. To support this process, the HD Centre, the NCIC and other organisations should invest in sharing experiences of good governance and improved communication with the elders and other peace actors in Nakuru.

(c) Mediation

The peace agreement recognised a mediation role of elders. The elders succeeded in promoting peace and averting violence. However, they did not deal with social integration. They need skills to enable

them contribute to the reintegration of internally displaced people and reconciliation. They also need training and capacity-building on awareness of women rights, human rights, and legal rights as well as conflict prevention and transformation mechanisms.

(d) Inclusivity

The agreement declares the inclusion of all communities and links community structures and processes with national structures. The inclusion of women and young people is essential, as is collaboration between state and non-state actors. Sustained dialogue and media coverage of the gains now being enjoyed by the two former protagonists – the Kikuyu and Kalenjin communities – is critical.

(e) Peace agreements in other parts of Kenya

The Nakuru Peace Process and agreement provides guidelines for several other processes in other parts of the country. The NCIC and NSC had been, and continued to be, involved in several inter- and intra-ethnic peace processes in other communities (annex 8). These include the Somali clans; Meru sub-ethnic groups; the Gabra and Borana; the Nandi and Luo in Muhoroni; as well as the Tana River ethnic communities of the Pokomo, Wardei and Orma. The Nakuru County Peace Process provided logical approaches for specific interventions at the national and local level, including dispute resolution mechanisms.

(f) Land disputes and reconciliation

The persistence of land disputes threatened the implementation of the reconciliation and reintegration processes declared in the Nakuru Peace Accord. The National Land Commission (NLC) was expected to use both traditional and legal conflict transformation mechanisms to resolve land disputes. Women and young people should however work with the elders to develop alternative livelihoods and reduce land dependency.

Chapter 22

Mediating ethnic conflicts in the North: The Turbi massacre Aftermath

The Commission shall promote arbitration, conciliation, mediation and similar forms of dispute resolution mechanisms in order to secure and enhance ethnic and racial harmony and peace.

– National Cohesion and Integration Act No. 12 of 2008, 25 (2) (g)

We went back to Northern and Upper Eastern again. Marsabit was our first stop. In a sense, it was a huge relief going back there after enactment of the 2010 Constitution because now we had something to offer, devolution. Marsabit is enveloped on most mornings by mist of the kind that occasioned a plane crash that killed key leaders in 2005. Among the team was Dr Bonaya Godana, a former Foreign Affairs Minister and MP for North Horr, Mr Mirugi Kariuki, Assistant Minister for Internal Security, Titus Ngoyoni, Assistant Minister for Regional Development, Abdi Sasura, MP, Guracha Galgalo, MP in the East African Parliament, Abdullahi Adan and Peter King'ola the Moyale District Commissioner.

The six MPs had been in a team that had been sponsored by KNCHR, when I worked there, to visit Rwanda and study the effects of genocide on society. We had carefully selected the MPs to represent the parts of the country that were then in conflict. After coming back from Rwanda, the MPs signed a document in which they pledged to lead peace efforts in their constituencies. So, when the plane crash happened in Marsabit, the MPs and the team was on a peace mission. Marsabit had been characterised by violent conflict for long, the bloodiest being the Turbi massacre in 2002.

Turbi massacre

Historically, the Gabra and the Borana have lived as one people. They share the same language and culture. Traditionally, it is a taboo for them to kill each other. Most of their ceremonial sacred activities are related. Until recently, they used to conduct their rituals in the same sacred places in Ethiopia. Three key factors underpinned the cause of the Turbi conflict; the Borana/Gabra ethnic rivalry for dominance, the unresolved district boundaries, and resource use. Turbi was in Marsabit District but Moyale District residents believed that Turbi was part and parcel of their district. This explains why seemingly simple conflicts in the area often became too complicated to resolve²³⁰.

In pastoralist Kenya, livestock is as important as land is to agricultural Kenya. When the Turbi massacre happened, most Kenyans sat up and took notice of Marsabit, but not for long. The story made front-page headlines, but was with time dismissed as just ‘one of those wars from the North.’ Marsabit would never forget it.

Differences between the Borana and Gabra were fuelled by the fact that the region did not have infrastructure such as roads and facilities such as hospitals and good schools. The Catholic Church had played the role of government, providing the much needed schools and hospitals. The traditional authority, the Gada system, that had regulated culture, politics, and security shared by both Gabra and Borana had weakened. Thus, the elders had lost authority, making it difficult for them to resolve conflicts.

The wider conflicts that took us to Marsabit drew in the Rendille, Burji, Gabra, Samburu, Turkana and the Borana (both from Kenya and Ethiopia). The Borana-Gabra conflict not only pits the two communities against each other, but also overflows to neighbouring Ethiopia. The Inter-Governmental Authority on Development (IGAD), the eight-member country trade bloc in Eastern Africa that had brokered the Comprehensive Peace Agreement (CPA) between Sudan and South Sudan, had established the Conflict Early Warning and Early Response (CEWARN) mechanism to foster cooperation among the member states. IGAD member states are Djibouti, Eritrea (admitted 1993 and suspended in 2007), Ethiopia, Somalia, Sudan, South Sudan, Kenya and Uganda. The CEWARN protocol was ratified in 2003. By 2010,

when we got to Marsabit and Moyale, there had been concerted efforts by IGAD to strengthen the early warning and response components of the CEWARN mechanism in the region. These efforts were, however, not enough.

The then DC, D. K Rotich, told us that our going to Marsabit was a blessing, as people felt marginalised and neglected. When we arrived, the tarmac road had reached the Merille Bridge the day before and people had celebrated overnight. This was unimaginable in many parts of Kenya, celebration for a tarmac road showed the depths of marginalisation. The residents told us that there were several ethnic conflicts, but none had defined the area such as the Turbi massacre. The massacre, led to mass displacement and produced 3,000 internally displaced people. Inclusion was not then a matter that could be discussed in Marsabit when the DC spoke to people who were fighting. It was too painful and the wounds were still raw. The region's key security challenge was cattle rustling, previously a cultural practice that had since evolved into a commercial practice.

Security teams were using different approaches to end cattle rustling, including setting up DPCs that encouraged dialogue among the communities. They had organised a voluntary disarmament exercise that had seen 288 firearms surrendered. The DC assured us that he was familiar with the NCI Act, 2008 and that he considered ethnic representation in all appointments made. "For the first time", he said, "the Turkana, El-Molo, Dassanech have all been recruited recently from Marsabit. We even recruited an assistant chief from the Indian Goan community".

Electoral campaigns were based on demonisation of others, and though the NCIC law provided for arrest of those promoting hate, in some cases, it was important to talk to the people and sensitise them instead of arresting them, because they had many followers the DC said. They could be used as a force for good. Peace dividends could avert violence other than deterrence measures such as jail terms. These peace dividends could include scholarships for children across all communities in to help the people of Marsabit to promote 'the degree and not the gun'. This was another case of juxtaposition of peace

versus justice, a point frequently made in areas where it was difficult to enforce the rule of law because of lack of proper policing.

We based our meetings on the relevance of the community Maikona Declaration in which the Gabra and Borana communities pledged to live peacefully with one another and enhance the sharing of resources. The declaration urged the communities to hold regular meetings to avert conflict. The declaration gives strict sanctions for the good governance of society. It also brought together Kenyans and Ethiopians to discuss peace across the border. The declaration was built on the foundation of the earlier Dukana Declaration that was binding around the areas of Dukana and Dillo between the Borana and Gabra. The Maikona Declaration was deemed necessary to accommodate other communities in Isiolo and Moyale. Two Borana men had recently been killed in Ethiopia and compensation paid. Therefore, the Maikonna agreement was working in some places. We needed to find out why it was not working in all places.

The penalties had contributed towards peace between the two communities. The North was governed by another agreement, the Modogashe Declaration. The communities in Wajir, Marsabit, Garissa, Moyale, Samburu and Isiolo had entered into the Modogashe Declaration to address conflicts emanating from unauthorised grazing, trafficking in illegal firearms, cattle rustling, highway banditry, control of livestock diseases and trade and socio-economic empowerment. The Modogashe Agreement gave clear guidelines on how these issues could be addressed. All these agreements were a terrible indictment on government. The communities in the North needed these agreements because the government could not guarantee their security.

The DC also briefed us about on-going peace initiatives. The best so far, he said, was spearheaded by an NGO called Horn of Africa Development Initiative (HODI) headed by a young lady, Fatuma Abdulkadir Adan. I knew Fatuma well, having worked with her at the KNCHR in 2005. She was the first woman lawyer from her ethnic community. She had surprised us by moving back home to Marsabit to set up a law practice. Her practice had quickly been overtaken by peace work and she opted to refer cases, normally handled by courts, to the elders for arbitration and mediation. She had told me that her training

had prepared her to take on the issues affecting her community, such as cyclic droughts, frequent conflicts, environmental degradation and human rights violations.

I had tried to persuade her that as a woman lawyer from a minority community, her chances of getting plum jobs in Nairobi were very high, but Fatuma had resolved to go back home to help her people. “There aren’t many educated people in Marsabit, and the few like me are highly respected,” she told me. “I shall go home, and they will listen to me when I tell them to stop the killings”. Fatuma knew that her word as a lawyer would be taken seriously. So, she had come to Marsabit and began working on community peace processes. As the DC narrated what Fatuma was doing, I sat there beaming with pride and joy for my friend.

HODI was doing several things. It was engaging the communities in conflict through sports such as organising community football matches. It had organised an inter-ethnic beauty contest in which warring communities had to select a winner from the ‘enemy’ as well as cultural festivals that brought all communities together, the Burji, Rendille, Gabra, and Borana, Turkana to show their talents.

Ethiopians across the border were good at celebrating patriotism but not so for Kenyans. Despite the marginalisation of Marsabit and its environs, Fatuma was trying to get the communities to feel that they belonged to Kenya. This was an ambitious plan for people with such seemingly deep hatred for each other. In Marsabit, the DC said, people lived separately although the old town is for everybody. People coming in from outside to live in Marsabit only settle among their own ethnic community. There are occasional clashes. For instance, there had been conflict between the Borana and Burji recently resulting in each of them stopping to buy from the other’s shops. This situation was not prevalent before the Turbi massacre. After the massacre, the effects of the conflict spread everywhere, including offices, where people sat only among their own.

The boundaries between the ethnic communities were supposed to guarantee peace, but they created problems. The boundary between Laisamis and Saku, for example, was not very clear and therefore, was very sensitive. The DC asked us to engage the relevant government

agencies to build a trans-boundary project such as a dam, using the local people to ensure ownership. "Water is life here. Once we have water in the dam, it will be for all of us, all the camels, goats, cows and people; and therefore, the dam will serve as a place where people can meet peacefully."

The DC had received complaints that some communities such as the Rendille were side-lined in the allocation of resources such as water tanks. Commissioner Halakhe advised us that the key issue was more about, who in the communities would be in charge and that the resources, were just a side issue. The problems were not just in Marsabit. The issues of livestock theft and possession of illegal firearms cut across from Meru to Moyale and Rift Valley. Cattle rustlers often came from Samburu targeting Marsabit. The DC said he was working with the DC of Laisamis on a new initiative 'the oasis peace caravan initiative' that had recently been started by some individuals. The key to lasting peace would be the support of local political leaders in ending banditry as well as cattle rustling and illegal acquisition of firearms.

The conflicts that were going on then pit the Dassanech against the Gabra, the Gabra against the Turkana, Rendille against the Borana, and Borana against the Gabra, and the Rendille against the Gabra. Yet all the communities we spoke with said they wanted peace. The change of cattle rustling from a cultural activity to actual theft of stock had given rise to highway banditry exacerbated by the use of firearms. The easiest place to take the stolen cattle was Isiolo, because of its proximity to markets.

As we spoke to the communities working to end the conflicts, we told them things were changing. The government had decentralised and now there were more DCs on the ground. The elected crop of MPs were not as militant as their predecessors resulting in calm in the region. Marsabit was also a recipient of IDPs from other parts of the country such as the Borana who had been based in Nairobi selling goats in Mathare and Kariobangi but had to come to Marsabit because of the PEV.

We had a series of meetings with the local communities. The more we spoke to people, the more we realised that like the never ending Marsabit mist, the Turbi massacre hang ominously over the town.

Locals were at pains not to mention it, unless asked to, yet it was the defining factor in the relationship between the Borana and the Gabra. Both the Gabra and Borana told us about their struggles to cope with the massacre itself and its effects. When we eventually caught up with Fatuma Abdikadir Adan of HODI, she told us she did not know her mother was Gabra until the massacre happened and rifts began to split the family. Her father is Borana. Many Gabras and Boranas who had inter-married divorced.

We convened the final meeting in Marsabit and specifically targeted the Gabra community in Kambi Kartasi, an IDP camp. *Kambi Kartasi* is a Kiswahili reference, which *means the camp made of papers*. The spokesman, who was resplendent in Ethiopian robes, made it clear that he had nothing to ask of Kenya and identified more with Ethiopia. Kenya had done nothing to make him feel Kenyan. The women were seated at the back; their eyes, painted with kohl, their headgear colourful. One of the women stood out. I noticed her because she had the bearing of a queen. Her eyes bore into us. There were many children who were sitting around and near her feet. Her gaze was direct and unflinching.

The previous day we had had a similar conversation in another IDP camp; a Borana IDP camp. In the Borana IDP camp, we had found only women and children, despite the fact that we were there till late into the evening. To get to the Borana camp, we drove on non-existent roads, carving our own path through swathes of bush. Now in the early morning, from where we sat in the Gabra camp, we could see tens of donkeys making their precarious way down the steep Karatin Hill – originally named ‘quarantine’ by the British. The donkeys were laden with the hand drawn water that Marsabit town relied on. Both camps are products of the Turbi massacre. It had now been seven years since the massacre, but the IDPs had not returned home. The Gabra and Borana had lived together before, the Gabra spokesman said. We were one people, but now we are as different as day and night.

We asked the IDPs why they were in Kambi Kartasi. They asked in turn, why do you want to know? We deal with ethnic differences and peaceful coexistence matters, we said. We have come to talk about peace, permanent peace. “Get to the point”, the strong woman said. “Dialogue is like a road which will take you far unless you decide to go back.”

"Tell us what you want with us," she said. "My husband was a teacher; I lived on top of that hill in a big house," she said, pointing.

"These hands you see," she said, "have helped birth many human beings. Every child who passed from the mother's stomach into my hands, I considered my own. Not anymore," she said, "not anymore."

"The children I assisted at birth and I watched grow, attacked my family. I was the enemy to children who, a day before, I had met and greeted on the way to school. They had stood aside, creating a path for me between them and greeted me in respect.

"Make way for Mama," they had said.

"When they came to burn my house, their eyes were blazing orbs of hate."

"You are the other," they said, in my language, in the language we all shared.

"You are different," they said, "you don't belong here".

"How?" I asked.

"We don't know," they responded.

"But we were told you are different and therefore you are not one of us."

"You must leave our home," they shouted.

"Go back to where you came from."

"They lit up the fires and burned my home, a home their fathers had built in gratitude for the years my husband had served, teaching their children and grandchildren," she said.

"In hours, all I had left was my soul, nothing else," she said bitterly.

"Is there anything else you wish to know?" she asked.

How, I wondered, could I talk to a woman like this about cohesion and integration? Cohere to what? Could we dare speak to her peaceful co-existence of the ethnic communities living in Marsabit?

In Marsabit town, the Borana and Gabra go to different meeting places, different restaurants. They do not even share markets. Everywhere we went, we asked, what brings the Gabra and Borana together?

"Water."

The people living in the IDP camps and those we met in the other meetings confirmed to us that water is a vital resource that the Gabra and Borana will gladly share.

It would take a lot of forgiveness, hard work, inspirational leaders and goodwill to get these communities to share more than water. We told them that there was hope in a new Constitution that brought devolution and resources. A new road was coming. The road, with freshly laid tarmac, now connected Isiolo and Merille and would ease access to Marsabit. As soon as we raised the issue of the road, they withdrew. Halakhe later told us why. The elders were wary of this new development and had asked the people to construct homes far from the road. They were afraid the new road would bring people with different cultures. They were afraid of the unknown. They were afraid of 'Kenya'.

The young saw opportunities though. There was a market started in Merille (mwisho wa rami) end of the tarmac road, which brought the Meru, Borana, Turkana, Samburu, and Gabra together to trade. Cattle rustlers had since disrupted it. The youth spoke wistfully of seeing it operational again. We promised to address the IDPs matter, bring the leaders together, and raise their security concerns with authorities in Nairobi. Despite our assurances, the spokesman asked as we left: "Will you change anything here or are you like the wind that will come and pass and you will never see it passing?"

* * *

While in Marsabit, on this and other occasions, we stayed at the Nomads Trail Hotel. The hotel was on the potholed main street of the town. It had been raining and the main street was almost impassable with our car sliding from one side of the road to the other in the thick mud. At the Nomads Trail Hotel, there was an item on the menu called 'Federation'. 'Federation' was a mixture of all the different types of food available. Another item on the list was KK, *Kama Kawaida* (the usual), *chapatii* and beef gravy. I tried out both meals. The *Kama Kawaida* turned out be exactly that, the usual that my tastes were attuned to. The 'Federation' was a combination of different tastes, at once clashing and complementing, of a delicious meal.

On our way out of Marsabit, we passed by Fatuma's HODI office. I asked her if there was a possibility that everyone in Marsabit could come together in a federation, like the food they ate. Fatuma was among the young and hopeful ones. She believed that much of the animosity between everyone would end if the Gabra and Borana came

together. She spoke of the hopes of the Gabra and Borana when she said, “I am sure the Borana and Gabra can peacefully coexist. I work on it every day. Their blood coexists in my body, so why can’t they?” A few months after this conversation, Fatuma got married to a man from the Rendille community. Her children’s ethnic community, she told me, would be Kenya.

Mandera

Everywhere we went in the North, the people marvelled that Kofi Annan had come to intervene when about 1,300 people were killed during the PEV, yet among the pastoral communities, hundreds of people were killed every so often and nobody cared. It was the same in Mandera, a Kenyan town on the border of Somalia and Ethiopia inhabited by the Somali clans of Murule, Gurreh, Degodia and Hawiye.

Newspaper headlines in Kenya, an elder in Mandera had told me, are known to proclaim: “*30 Turkana rustlers killed in dawn raid*”. This is quickly relegated to a few lines in the following day’s paper. There will be no headlines quoting the police declaring that ‘no stone would be left unturned’.

“If thirty people were killed in an estate in Nairobi such as Kileleshwa,” he chuckled, “then a commission would be set up and the IG would be on TV every day declaring that no stone would be left unturned. Nobody would call anyone ‘rustlers’ in a newspaper, unless they were referring to us Northerners,” he said.

“Our borders are porous,” he said, “but it is not the work of the Kenyan-Somali to safeguard them; but then again, we cannot keep people who are suffering away so Somalis from Somalia come in.” What we need are proper systems to vet those coming in and a government in Somalia, and then we shall be like the Kenyan and Tanzanian Maasai, who no one ever complains about, yet they cross the borders just like we the Kenyan Somalis and nobody demonises them. “And most importantly,” he said, “you at NCIC must work on integrating Kenyan-Somalis with the rest of Kenya. If we feel Kenyan, then we shall be proud to protect our country.” These were words I carried over to my next assignment, that of taking the conversation on “Ethnicism” to national TV.

Chapter 23

From Ethnicists to Kenyans: Discussing “Ethnicism” on National TV

Political economy teaches us that it is not “tribalism”; rather that it is the relation of production and the resulting class structure, which is the bane of our politics. Let us talk tribalism (or ethnicity, for those who find the former term loaded) and provide a perspective we are often too shy to discuss in public.

– Enock Okwach, Kisumu,

Pursue tribalism to its logical end, The Standard, 26th March 2010

We began having discussions again with Kakai Kissinger on what to do next. I told him that I had read about the national town hall conversations on race that President Bill Clinton began in America that resulted in many referring to him as the first “black President” of the US. Could we pull off something like that? Could we have a conversation on ethnicity and race, positives and negatives on national television? I asked.

The road to cohesion television shows²³¹

The televised national conversations would be perfectly in line with the objects and functions of the NCIC. Kakai made the proposal to his employer, GiZ, which agreed to fund it. I put together a concept note and presented it to the NCIC. The discourse on race and ethnicity would contribute greatly to shaping NCIC’s policies. The show would also give NCIC another opportunity to showcase its work.

The Commission approved the concept. The discussion would have people from the grassroots, either literate or semi-literate it did not matter. The key qualification was for them to be Kenyan. The audience was to have representation of at least 50% women and 30%

people with disabilities. We would have various professionals from the locality sitting on the panel. An NCIC commissioner would also sit on the panel and a moderator would lead the discussion. We needed a television personality to host the show and we settled on Louis Otieno, a renowned TV anchor, to perform that role.

We held a workshop for professionals including people in academia, civil society and government officials before we started the shows, led by Prof Okoth Okombo who later passed on in 2017. They refined the questions and advised on how to make the conversations productive and fruitful. We were conscious that this was going to be a difficult conversation.

The GiZ team, one of my fellow commissioners Fatuma Mohammed and I attended every show countrywide. We would identify a controversial ethnic or racial question for each region that that would ignite a conversation with the audience. So much depended on how the moderator put the question. We started in Nairobi and then rolled out to Eldoret, Nakuru, Isiolo, Nyeri, Mombasa, Kitui, Garissa, Kisumu and Kakamega towns. Louis did not disappoint. We would begin the show with an off air conversation intended to warm up the audience before the cameras began rolling, making them feel at home.

When the show began, Louis would kick off the discussions by voicing the controversial question, mainly stereotypes prevalent in the area. These would set them off and the discussions would get very heated and useful. We told him to encourage people to be emotional and truthful about where 'ethnicism' hurt. The shows run on two television stations, K24 and the national broadcaster, Kenya Broadcasting Corporation (KBC). The recordings were also played out on national radio. The show encouraged comments from audiences through email or phones, and we got a lot of feedback.

Three common themes were: the PEV of 2007-2008, unresolved land issues and political exclusion based on ethnicity and race. We analysed issues coming from all the shows for action with the team.

Road to cohesion show – Nairobi

In Nairobi, the audience clearly indicated that they wanted to discuss the basics of ethnicism. Dekha Ibrahim Abdi, founder of the idea

on district peace committees, was on the first panel. Dekha was my sounding board on several issues and I had discussed the show with her in detail. She had told me, “we must learn to swim from the deep end. I will use my example, as a Somali woman, to encourage others to speak openly about themselves. I am ready to help”. It was not until the show began that I realised what she meant.

We were apprehensive since this was the pilot. Dekha was the star of the show, clearly steering the conversation from blame game to personal responsibility, from ‘my rights to my responsibilities’, telling the audience about her experience as a Kenyan-Somali who reached out to people in Mombasa for acceptance. The show generated so much discussion and enabled people to talk freely about their ethnicity.

Road to cohesion show – Eldoret²³²

Why does electoral violence happen in Eldoret? If we are honest with ourselves, we fall in love across communities, we intermarry, we coexist peacefully with each other when we need to. When fighting other communities, do we stop to think that their sisters are our wives? Our other problem is that we have no respect for the rule of law and no respect for human rights and freedoms. National athletes’ achievements bring Kenyans together with the majority of Kenya’s marathoners coming from Eldoret. Eldoret must rebuild its tattered image from such stories. The post-election violence had a huge effect on Eldoret with banks moving to Nakuru. Nobody should set conditions for people to live together. – Participant in the show

We were in Eldoret for the Road to Cohesion show on 10th August 2010. The majority of Eldoret residents are Kalenjin, although there is a large population of other ethnic groups, mainly Kikuyu, Kisii and Luhya. Eldoret was one of the places worst affected by the PEV. The name “Eldoret” originates from the Maasai word ‘*eldore*’ meaning *stony river* because the bed of the Sosiani River that is nearby is very stony. The White settlers called it Eldoret, which they found easier to pronounce. Its original inhabitants were said to be the Sirikwa, then the Maasai and finally the Nandi. Driving through Eldoret, it was difficult to ignore the deserted shells of burnt businesses and homes, the reminders of the PEV of 2007/2008.

The Eldoret show brought out a number of issues that included: The Kalenjin refer to the Kikuyu as ‘Sangara’ – weeds. The Lancaster

independence Constitution reinforced ethnic identities and ethnicism and did not identify any national aspirations. The preamble in the new Constitution has aspirations that take into consideration ethnic, cultural and religious diversity. The Kikuyu, who settled in the Rift Valley, gave the new areas Kikuyu names, which angered the Kalenjin. The Kalenjin began to chase other communities away in 1992 and 1997 because of electoral tensions, as they did not vote for the Kalenjin candidates. The Kikuyu had become a thorn in the flesh to President Moi, a Kalenjin, and locals felt the need to teach them a lesson. Some Kalenjin had worked on colonial farms. When these were sold they became squatters on their own land.

The violence in the Rift Valley has become a vicious cycle as voters had begun voting in people with the potential to continue the cycle of conflict. The media refer to some people as a 'host community' even when land is acquired on a 'willing buyer, willing seller' basis. Women have no claims to ethnic community ownership as they are married everywhere. During meetings, leaders speak in their vernacular languages; they use their people to wage violence; the non-Kalenjin are afraid at every election cycle. Ethnicism started with the colonialists, continued with Kenyatta and Moi and is promoted by politicians. Land issues have been mishandled. Athletes bring Kenyans together. Eldoret has produced Kenya's largest number of world beating athletes. Many of them are Kalenjin.

The resolutions at the Eldoret show were: Intermarry – inter-ethnic coexistence had proven to be better with intermarriages. Contact NCIC if called a '*Sangara*' or any other derogatory name. Respect and keep the original names of places in the Rift Valley. The Kikuyu should not rename Kalenjin areas and the Kalenjin should not rename Maasai areas such as Kiptagich in Mau Narok. Elections are divisive. There were Kalenjin supporting PNU who were all ostracised and displaced in the post-election violence; they now live in forests and need help. Confront those who claim to 'own' the Rift Valley with facts; let it belong to all Kenyans who live there. Other resolutions were: develop respect for rule of law and human rights and for people. Eliminate lies and propaganda during elections. When multi-party electoral politics were introduced, the lies told were that 'land would be taken from us'.

NCIC should prosecute perpetrators of hate speech. Educate people to accept diversity, to respect each other. Leaders are to blame for ethnic mobilisation. They call meetings and address their ethnic communities alone in their mother tongues.

There was consensus from the Eldoret road to cohesion show that Kenyans have the power to make or break the country.

Road to cohesion show – Nakuru²³³

During the elections I heard people making references to 'watu wetu' our people. Initially I thought 'watu wetu' our people meant people one can relate to or borrow something from but soon realised that I was excluded and that 'there are watu wetu zaidi' our real people, our ethnic community. – Participant in the show

We recorded the Nakuru road to cohesion show on 17th August 2010. Nakuru is considered a Kalenjin area that has consistently changed its face as many other communities live there. The name 'Nakuru' is derived from Nakurro, the Maasai word meaning a 'dusty place'. The people in the show included the Kikuyu, Kalenjin, Luhya and Meru. Many Kenyan Asian and white settler families also remained in Nakuru after independence. Although the town's population is predominantly African, the town has a cosmopolitan feel. People from different regions of the country have added a unique flavour to the town and make Nakuru a vibrant town. The town has a sizable population of Kenyan Asians and Whites.

The key issues at Nakuru were; Recruitment to public sector jobs and other opportunities be shared out equitably. Weak leaders lacking confidence retreated to their ethnic identity and poisoned the minds of their people, separating them. High salaries for MPs had raised the stakes and candidates were prepared to use violence to be elected. Kenya has become a nation that judges people by their ethnic identity rather than their personality. It leaves no chance for a leader to come from a tiny ethnic community like the El Molo. There was intra-Kikuyu ethnic tension between those who worked for the colonialists and the Mau Mau who fought for independence. Those who worked for the colonialists were seen to have benefited from land and other resources and they in turn side-lined those who fought for independence. This situation was compounded for the Kikuyu who were displaced in the

recent PEV in places such as Molo many of who were those who fought for independence and their children. The quota system of education had exacerbated ethnicism. There was a tendency to ignore cattle rustling in Northern Kenya instead of treating it as robbery with violence for instance when the Turkana and the Pokot fight with guns over cattle. However the Government react's fast when the same gun is used in Nakuru, and the offence is treated as robbery with violence. There was discrimination against Muslims in issuing of identity cards.

The suggested solutions were; Eliminate quota system in education and ensure students go to school anywhere in the country. Promote exchange programmes among children of different ethnic groups to learn other cultures. Prevent violence by promoting joint activities among different communities. Develop and emulate as role models Kenyans who stand for Kenya rather than just for their ethnic community in the same way that there is no consideration for the ethnic community of a doctor, teacher or driver. Encourage intermarriage.

A pastor said that after 2007-2008 post-election, he almost lost hope. He has been involved in peace building in the Rift Valley for a long time, but something always went wrong during the elections and people resorted to violence. He said after the violence ended, he would ask people why they fought and they would say '*ni shetani*', it's the devil. He gave an anecdote to illustrate it;

'On 2nd January 2008, I was on my way to Molo when I came across a roadblock manned by some youth; they were stopping all vehicles. Only those from their ethnic community could pass, those who were not from their community met a very ugly end – they were killed. I drove on confidently towards the roadblock, though I was not from their ethnic community.'

"They stopped me and asked, "Who are you?" I was shocked because they knew me; I had even ministered to them. The youths made me carry the blocks to help unblock the road so that I could pass. They were no longer human beings. They were giving me instructions –right, left and centre. I wondered what had happened to make them change so drastically and in such a short time.

"Later, I was told I was lucky to have passed that particular roadblock and fortunate to escape with my life. People poison

the minds of other people, so that they fight and later can mask their activities using the excuse that they did not know what they were doing. After the violence, I met them; they now remembered my name and said ‘*ni shetani*’, it’s the devil. We all have a duty to give the right information before others poison these youth again before the next elections.”

Road to Cohesion Show – Nyeri

Young people were said to be leaving home because of few employment opportunities and using any money they earned to buy alcoholic drinks. Women – the mothers and wives of these young men have been forced to go to the streets to demonstrate against cheap alcoholic brews.²³⁴ The men have been unable to fulfil their duties as husbands and fathers.

– Participant in the show

The Nyeri Road to cohesion show was recorded on 24th August 2010. Nyeri is a densely populated part of Kenya’s Central Highlands, home mainly to the Kikuyu. The show had a largely Kikuyu audience. There were a few Luhya, Kisii and Asians too.

The Nyeri issues were: Ethnicism goes back to colonial times, when leaders used it to their advantage to divide and rule; The post-colonial governments continued with it. There is division among the Kikuyu identifying themselves as from Nyeri, Kiambu or Murang’a; Marriages across the Kikuyu regions are sometimes frowned upon. Asians were branded as ‘the worst employers’ and perhaps that explains why their businesses were the worst affected by the PEV. This point was debated at length and the conclusion was that this opinion was based on stereotypes as some Asians worked harmoniously with other Kenyans to build the nation. Alcoholism and drug abuse are serious problems among unemployed youth. Jobs are scarce leading to criminal activities. There is a wide generation gap and disintegration of families with the older generation tending to be more ethnicist. Kikuyu youth expect to inherit land early. This is problematic because the fathers have refused to subdivide the land for fear that the young men will sell it.

Suggestions to resolve the issues discussed: Promote intermarriage and intercultural festivals. Get to know each other, and so learn from each other, celebrate diversity and accept differences. Promote equal

opportunities to empower youth and get them out of poverty. Promote family values and ethics; savings and investment. In this way, people won't 'sell their votes'. Sensitise leaders to avoid creating hatred among communities based on ethnicity. Review education quotas, and rewrite history books to include everyone. Reach out to religious organisations to embrace tolerance and good values.

Road to cohesion show – Kakamega

We recorded the Kakamega Road to Cohesion show on 31st August 2010. Most residents of Kakamega are Luhya. Luhya, also known as the Abaluhya, are settled in western Kenya. They neighbour the Luo and Kalenjin. Luhya is Kenya's second largest ethnic community. Though considered one group, the Abaluhya consist of about 18 sub-tribes, each speaking a different dialect. The discussions at the show tended to focus on the negatives rather than the positives, even as the moderator tried to be more positive. Even positive statements such as the Luhya are democratic (the Luhya do not vote together as an ethnic bloc) were presented negatively. People kept talking of "our vote does not matter anyway; the Luhya do not vote as a bloc which makes us weak" among others. The only time the Luhya voted as a bloc was during the 2010 referendum."

The following issues came up during the show: Divisions exist among the Luhya because of the sub-tribes that speak different dialects; The Kenyatta, Moi and Kibaki governments marginalised the region; The Luhya participated in post-election violence, mainly against the Kikuyu many of who had to flee across the borders into Uganda. Cohesion and integration is desirable in the region to eliminate violence. The Luhya need to be like Muslims who live as a community and take care of each other.

The suggestions to resolve the issues discussed were: Cohesion was now being preached in churches and mosques; and inter-faith meetings were taking place. This was to be encouraged. There was need to find ways of getting people to support not undermine one another.. Vote in women to ensure peace. Learn each other's ethnic languages. Give access to loans to enable the people venture into business. Take advantage of the new constitution and devolution.

Road to Cohesion Show – Kitui²³⁵

They say cowards always go home safely to their mothers, and in that case, then we Kamba are cowards – we do not want aggression with other communities.

– Participant in the show

On 7th September 2010, we took the show to Kitui, the homeland of the Kamba. Apart from Kamba participants, there were few other ethnic communities mainly the Somali and interestingly, one Japanese national. One of the panellists explained that part of the reason for the PEV was incitement of the youth by adults, although it had not affected Kitui. The people in the show talked about how shocked they were by the violence.

The issues raised were; Kitui people are friendly and do not like aggression. Kenyan Arabs and Asians trade peacefully in Kitui. They were not involved in the violence because they believed that ‘when your neighbour is safe, you are safe too’. Politicians had been inciting youth, which had led to violence in various places. There was border conflict between the Kamba and the pastoralist Orma, who believe that everything green (including crops planted by Kamba) is fodder for their cattle. The church had been getting too involved in politics. Witchcraft was a big issue in the region and the church was asked to preach against it.

The suggestions from Kitui were: Politicians need to stop fanning violence and encourage intermarriage.

Road to Cohesion Show – Isiolo²³⁶

Development is good, but it might wipe some of us out, with new ideas and new lifestyles.

– Participant in the show

The Isiolo cohesion road show was recorded on 14th September 2010 and was attended by members of Borana and Meru communities. Isiolo, which is located in the Upper Eastern part of Kenya, grew around the local military camps, occupied largely by descendants of former Somali soldiers who fought in World War I. The predominant groups are Borana, Sakuye and Meru communities.

In Isiolo, the participants did not want to discuss ethnicism. Instead, they wanted to talk about the new tarmacked road running through Isiolo that was snaking its way into the unchartered North. They only accepted to speak on ethnic and racial relations in regard to the road and impact on livelihood. They were afraid of the road; it portended the death of the town, and was likely to bring criminals and attract immorality, they said.

The issues that came out of Isiolo were: Isiolo was underdeveloped and suffered perennially due to banditry. Those displaced by the Shifta war have not been resettled. Residents complained of poverty, poor governance, insecurity, water, unemployment, boundary conflicts, lack of ID cards and title deeds. People with disabilities were discriminated. Leaders use the youth to foment chaos. The new Constitution offered hope through devolution. Concerns were raised over planned development such as the road linking Lamu port to Ethiopia, with the argument that it would bring agriculturalists who would destroy the livestock livelihood.

The recommendations from Isiolo were: Empower the youth and sensitise them against being misled by political leaders to cause chaos. Elect leaders with integrity who would promote development in the region. Sensitise the people on the benefits of the development projects, including the new road. Resolve historical injustices.

Road to cohesion show – Garissa Town²³⁷

Even as we talk of past massacres against the Somali the real marginalisation is here in Garissa at the passport control office where, to be issued with a passport, one has to prove that ones' parents are his/ her own.

– Participant in the show

The show in Garissa was recorded on 20th September 2010. Garissa is a town in former North Eastern Province. The majority of people in the audience were Somali. Garissa, Wajir and Mandera are the key Somali towns. There are Kikuyu and Luhya people living in the town, although they are a minority.

The Garissa issues were; History of neglect of the Somali community dating back to the colonial times. Poor development characterised by lack of infrastructure such as roads, power and water.

State persecution. Due to discrimination and neglect, the Somali in Garissa do not really consider themselves to be Kenyans, and this is exacerbated by persistent problems with the issuing of identity cards. Resource scarcity and the lack of productive economic activity had led to local conflicts. There was no PEV in 2007-2008 in the region, and the Somali community has integrated well with other communities all over the country. Harassment by corrupt officials conducting searches at the bridge from Garissa, as if it, rather than Liboi, is the border town. Conflict between clans.

The recommendations from Garissa were: New Constitution brings hope for equitably distributed devolved resources and hence creates a sense of inclusion. Eliminate clan violence and promote resource sharing. Discourage stereotypes against the Somali. End discrimination against women. One man defined the Garissa show for me. His name is Hussein Farah. Hussein Farah, it turned out, had told his story to anyone who cared to listen. He had told it to Members of Parliament, human rights activists, Ministers, every visitor to Garissa that he could access. Hussein came to the show with one primary purpose, to tell his story to NCIC. In each of the shows, an NCIC commissioner would sit as part of the panel. I was representing NCIC in Garissa. Hussein was sitting at the back; when he began telling his story, Louis held him by the hand and brought him to the front and asked him to speak directly to me.

He was shaking with emotion as he spoke. In my entire life, I have never seen pain such as I saw in Hussein's eyes. His wife was killed in 1994 during a fracas in which the police used live ammunition against the townspeople of Garissa. This fracas would later become known as the Garissa massacre. Two of his children who saw their mother shot dead went insane with grief and now roam the town, uncontrollable. A public inquest found the police guilty but nothing happened. "He wanted justice," he told me, "for his children and for the love of his life." Even an acknowledgement that she was killed would ease his pain or at least a memorial plaque in remembrance of those who died on that day. Does he believe I can help him? I ask. "No" he says emphatically, "I have sent many but they do not come back – if you are burnt by anything white you will be scared to drink milk. But I must tell every

visitor I see about her so I will tell you anyway. Maybe one day, my message will fall on to a person who will listen."

Hussein Farah had now gone back to his seat at the back. Looking at him, I said, Mzee Hussein, as NCIC, we promise to try our best. I am a woman but I feel your pain on the loss of your wife. I promise you that I will help as much as I can. I will walk with you. Louis also promised to take up Hussein's matter. Hussein did not respond to us, he just sat there unblinking, staring at something behind us, his loss bigger than the agenda of us moving the country from ethnicism.

I spoke to Hussein every day for a week, following up leads on his matter. A week after the conversation, Hussein sent me a file documenting the issues relating to his wife's death for follow up. Confirming that the documents had arrived in Nairobi, Hussein said to me, his voice breaking over the phone, "Please, help me".

Road to Cohesion Show – Kisumu²³⁸

The real problem of the Luo community was marginalisation by the previous Presidents, notably the Moi and Kenyatta administration. Fighting the Kisii and Asians is just displaced aggression. The two Presidents marginalised the Luo because of their political affiliation, in particular for following Jaramogi Oginga Odinga and later his son Raila Odinga. This continuously impoverished the Luo and made them angry and easily provoked.

– Participant in the show

The cohesion show in Kisumu was on 25th September 2010 at the Kisumu social hall. The audience consisted of the Luo, Kisii, Luhya, Asians and Kikuyu. There were strong feelings against the Asians, Kikuyu and Kisii. The sentiments against the Kikuyu and Kisii was the perception that they had voted for PNU and therefore for Kibaki. The negative sentiments against the Kenyan Asians were more of the fact that they were perceived to make profit out of the sweat of the locals while paying them peanuts.

The show started on a high note with Mohamed Khan, a Kenyan Asian welcoming participants to Kisumu in perfect Dholuo.

The issues raised included; Resentment against the Asians, Kikuyu and Kisii due to commercial pre-eminence (the first two in business and the latter as farmers) and electoral loyalties. Perception that

Asians keep out African competition; and that the Kisii vote against Luo political candidates. Perpetuation of inequalities as a result of the real or imagined perception that 'resources follow the presidency'. PEV issues not addressed. Need to appreciate the abilities of each of the communities living in the town. Promote fishing industry and support local industries. Consider Asians for parastatal appointments. Destruction of property during the PEV and failure to address the grievances.

The recommendations from Kisumu were: Building on the gains of the new Constitution such as devolution and equitable resource distribution; integration among the local residents, especially, the Asians with the locals; encourage local investors and promote fishing and agriculture: Understand the common colonial backgrounds that divided the country ethnically and made Kenyans belittle their capabilities; empower the youth to dissuade them from being used by politicians to cause chaos: appreciate each other's culture. Kenyan Asians have tried to integrate and taken the trouble to learn local languages such as Dholuo and Kisii and this must be commended: partner to strengthen employer-employee relations and nurture Asian-African relations.

Road to cohesion show – Mombasa²³⁹

The Road to Cohesion conversation took place on 5th October 2010, in Mombasa at the Coast. Participants included the Mijikenda, Kenyan Arabs, Swahili and Akamba, among others. Mombasa has seen many bouts of violence mainly targeting those from upcountry. Mombasa is a melting pot of ethnic groups and cultures. Intermarriages created new ethnic groups such as the Swahili people. Trade, the building of the railway and missionary work brought other Kenyans from upcountry.

The Mombasa issues were: The worst ethnic violence was in 1997 in Likoni. There was also violence in 2008, when the Kikuyu, Kamba, and people from Meru and Embu were targeted for eviction and destruction of their property; there was a strong belief among the Mijikenda and Digo that Kenyan Arabs and people from upcountry have taken over their communal land; the locals had interpreted calls for devolution as meaning that non-locals should leave the region and allow the locals to benefit from their resources; low literacy levels and high unemployment

rates: the impact of the slave trade shaped quite a bit of the current relationships at the Coast as some are descendants of slaves and others of slave traders; the perception that the Keanyan Arabs are wealthier than the locals has increased the sense of marginalisation among the Mijikenda; muslims have been discriminated against on issuance of IDs and passports.

The recommendations from Mombasa were: stop discrimination and learn to coexist with communities from other regions; implement the new Constitution quickly to promote equity and provide opportunities for the minorities and the disabled in employment and politics; devolve resources and power; avoid stereotypes.

Reflections on the road to cohesion conversations

At the end of the conversations we were exhausted but ecstatic. We had done it. We had broken the jinx, discussed ethnicism on national television; it was now out in the open for anyone to talk about. These conversations were meant to defuse tensions and create avenues for dialogue. Kenyans did not disappoint. They had flocked the shows. The conversations were honest, painful and emotional. There was humour too.

The next step was to make ethnic dialogue a common practice in the country. We had to make discussions on ethnic and race relations woven into the stories that grandmothers told at firesides and mothers told at dining tables. The new Constitution provided a useful avenue for dealing with the various types of discrimination.

NCIC worked with Mike Eldon again, this time to follow up on the issues that came out of the Road to Cohesion shows.

NCIC held meetings with the Minister for Immigration, Mr Otieno Kajwang, Registrar of Persons and relevant Directors in the Ministry of Immigration to resolve the matter of difficulty in issuance of identity cards for some people, mainly the Muslims. The situation improved after the consultation with the Minister directing the expediting of the issuance of IDs subject to scrutiny by security agencies to eliminate cases where foreigners infiltrated the system.

One of the areas that we were also able to make much input on was on the education quota system which is discussed in the chapter on

education. Issues that were not under the NCIC mandate such as land and employment were referred to the relevant agencies or ministries. There were specific complaints of maladministration by police, and other government officers.

But the Commission's capacity for comprehensive public sector culture change was extremely limited. Mike Eldon suggested that this was the remit of the Transformative Leadership unit in the Office of The Prime Minister, with whom NCIC should liaise, so that it would be incorporated into public sector reform initiatives. All the shows exhibited a commonality of thought on the following areas, promote dialogue as a solution. Respect each other's differences. Stop rallying and fighting for the politicians inciting ethnic violence, build bridges between religions and neighbours, Resolve conflicts without resorting to violence, consider restorative and not just retributive justice, Unite against common challenges, Reduce inequalities, take personal responsibility for promoting nationhood.

* * *

Meanwhile, there was development on another front. The Prevention of Organised Crimes Act came into force on 23rd September 2010 and was closely followed by a gazette notice by the Minister of State for Provincial Administration and Internal Security, Prof George Saitoti, which proscribed criminal groups.²⁴⁰ This was not the first time the groups were being proscribed; a similar process had been carried out in 2000.

The proscribed groups were: Al-Shabaab, Amachuma, Angola Msumbiji, Banyamulenge, Baghdad Boys, Charo Shutu, Chinkororo, Coast Housing Land Network, Congo by Force, Dallas Muslim Youth, Forty Brothers, Forty-two Brothers, Jeshi la Embakasi, Jeshi la Mzee, Jeshi la King'ole, Japo Group, Kamjesh, Kamukunji Youth Group, Kaya Bombo Youth, Kenya Youth Alliance, Kosovo Boys, Kuzacha, Makande Army, Mombasa Republican Council, Mungiki Movement, Mungiki organisation, Mungiki Sect, Republican Revolutionary Council, Sabaot Land Defence Forces (SLDF), Sakina Youth, Sungu Sungu, Siafu and Taliban.

The most feared of these groups were arguably the terrorist Al-Shabaab, comprised mainly of the Somali or Muslims, the Mungiki (Kikuyu), Taliban (Luo) Sabaot Land Defence Forces (two main clans of the dominant Sabaot community of Mount Elgon), Angola Msumbiji (Mainly Luhya, Kakamega County), Mombasa Republican Council (Mainly Digo but comprising of many other ethnic communities from the Coast), Baghdad Boys (mainly Luo), Kosovo Boys (mainly Luo and Luhya in Nairobi), Jeshi la Mzee (mixed membership, Kikuyu, Luo, Maasai, Abagusii and Luhya) and Sungu Sungu (Kisii).

Chapter 24

International exposure

The Commission shall undertake research and studies and make recommendations to the Government on any issue relating to ethnic affairs including whether ethnic relations are improving.

– National Cohesion and Integration Act No. 12 of 2008, 25 (2) (p)

I was finally able to take a break from the rigours of my work; 9th January 2011 found me in Boston attending a training on inclusion of women in peace processes. The Institute for Inclusive Security (IIS) hosted the programme as part of a programme called Women Waging Peace. On arrival, at the Sheraton Commander hotel where we were staying, I at once felt steeped in history when told that this was the hotel from which J. F Kennedy had declared his intention to run for Congress. The second part of the programme would take me to Washington DC.

It was my birthday, but more importantly, it was the day that the South Sudanese were voting in a referendum that would determine whether they remained with the North or would become a new country. It was also a day that I would meet 20 other women, all mediators in armed conflict like myself. I did not know of other women mediators of armed conflict in Kenya except Dekha Ibrahim Abdi. It was a great learning experience for me to meet 20 women experts from around the world, to immerse myself in their stories and situations.

The Institute for Inclusive Security – Women waging Peace

The meeting had been brought to my attention by the Berghof Handbook Centre in Germany. They had published my article *“Human Rights and Conflict Transformation: A mutual stalemate?”* in 2009 and now connected me to IIS. Roxanne Wilbur of IIS called to invite me while I was in Mandera discussing Al-Shabaab influence in the area with a group of elders. I remember the phone connection was very poor.

The IIS training programme was well arranged and included a lot of exposure to leaders. We met and discussed messaging with Harvard fellows in journalism and national security at the house of Swanee Hunt, the Chair of the IIS. She also taught at the Harvard's John F Kennedy School of Government. She invited us to talk to her class and I spoke about Kenya and the reform agenda. We listened to presentations and had discussions with Tad Oelstorm, Director of Harvard's security programme and Cynthia Enloe, a famous feminist.

We were taken through training on mediation skills by Susan Hackley, managing director of the Harvard programme on negotiation at Harvard Law School. We also had dinner with leading Cambridge academia leaders, Lia Poorvu and her husband William Poorvu. William Poorvu was the Class of 1961 Adjunct Professor in Entrepreneurship, Emeritus at Harvard Business School. He was the school's first adjunct professor and the first non-tenured professor to be given Emeritus status.

I felt particularly privileged to meet Prof Eileen Babbitt, who took us through lessons in the theory and practice of international mediation. Prof Babbitt had conducted extensive research on linkages between human rights and peaceful coexistence. As this had been the key point of linkage between my human rights background and the current work that I was doing at NCIC, I knew of her work and told her so. I had quoted her extensively in my published work on the two subjects. Like me, she agreed that human rights and peace building often shared common objectives, but there was a total lack of cooperation between the two fields.

In addition to the practical learning, we were also taught how to tell our personal stories. Swanee Hunt shared her story with us, how she became involved in social justice and the influences of her family on the decision. She had been an Ambassador to Austria from 1993 to 1997. She shared her experiences on hosting negotiations and meetings on securing peace in the neighbouring Balkan states. The experiences of women in the ethnic conflict in Serbia and Bosnia sounded like they were right off the Kenyan script.

The snow was falling heavily outside and many of us women participants from the global south could not resist the urge to go out and play with the snow like small children! It was the first time I played

with snow. Towards the end of our stay in Boston, IIS organised a global gala in which we all showed up in our traditional clothes. We danced and made merry, forgetting momentarily the precarious situation our countries were in. My African colleagues and I even sang the famous love ballad *Malaika*.

We left Boston for Washington and arrived to a welcome reception and debrief. We were scheduled to meet some of the most powerful policy makers in Washington DC and now began working to frame an agenda for women's inclusion in peace processes. We had dinner with Joyce Neu, a woman mediator who had worked with former President Jimmy Carter on several peace processes. By 17th January 2011, we had fine-tuned our recommendations into an agenda that could be shared with policy makers. We were meticulous. Everything had to be just right. If we did it well, we would be able to influence policy shapers into including women worldwide into peace processes.

On 18th January, we went to the Renaissance Hotel to meet with the policy makers. We first had closed door sessions with about 10 experts in a room and went through the recommendations. They gave feedback on what we should emphasise. My team had leaders of organisations such as the International Crisis Group, some ambassadors and trainee military officers from WestPoint. The military officers were learning from our experiences.

Two hours later, we sat down for lunch with 450 policy makers. The chief guest was B. Lynn Pascoe the UN Under Secretary in charge of political affairs. Each of us was assigned a table to lead discussions. My networking antenna was working overtime and I was in my element. At this point, I was really glad that I got this opportunity. Some of the women in our group with really powerful stories spoke about their wartime experiences in plenary. After lunch the Voice of America (VOA) interviewed African women participants. I talked about the KNDR peace accord in Kenya.

We then went into a closed door meeting with B. Lynn Pascoe. The 21 women mediators had selected Merav Moshe from Israel and myself to make a case for women's inclusion in peace processes. Merav and I had spent hours rehearsing. We spoke with passion, and when we were done, B. Lynn Pascoe acknowledged that this was a message that

would inform policy. *Shortly thereafter, I received an invitation to apply to be on the UN Mediation roster.*

On 19th January, we reviewed the recommendations, taking in the views that had come from the policy makers the previous day. We then began advocacy face-to-face meetings with policy makers. I went with Swanee Hunt to meet Congress woman Kay Granger. I was fascinated because she was Republican and Swanee a Democrat. I was looking out for political tensions in the discussion. However, women's inclusion in peace processes was a bigger agenda than American politics.

Later in the day, I teamed up with some African women mediators and we went to the AU offices. We also went to the Pentagon and met the director of African Affairs at the State Department. In our team was Florence Itheme a Nigerian who worked for the Economic Community of West African States (ECOWAS), Stella Sabiti a Ugandan, who worked with the AU and a Ruth Caesar a Liberian member of the famous civil society Mano River Women's group. The discussions continuously featured Cote d'Ivoire where electoral conflict had been escalating between the supporters of the two main candidates, Alasanne Quattara and Laurent Gbagbo.

In both the AU and State Department meetings, they asked for our opinion on interventions. The final decision was to send some women to Cote d'Ivoire. Florence and Ruth being West Africans would be in the team. The team representing the women would first proceed to Addis Ababa for the AU Summit to catch up with the latest updates on Cote d'Ivoire issues. I attended other meetings with Donald Steinberg of USAID and the Black Congressional Caucus. Everywhere we went, the overriding concern was the conflict in Cote d'Ivoire.

As we had worked on the recommendations, I had been amazed at how little I knew about the extent of women's inclusion in peace processes. I knew of the need to add on more women but I had not realised that exclusion of women from peace processes was a worldwide phenomenon. I now recognised that there were very few women sitting at peace tables worldwide, and that the only reason I could sit at a peace table had to do with my position as a commissioner. What surprised me were the statistics on peace processes; why they failed and how women's exclusion informed this failure. More than 50% of peace agreements

worldwide failed within five years of signature, partly because women were not party to the discussions yet they are supposed to be at the forefront of implementing them!

As I digested this information, I thought of the women who would only meet us in the periphery of male led and male attended meetings, giving us information such as the root causes of the violence that the men in the room would not give us. The men would say, we are fighting over land, but the women would say, it was not that. It was about the fear by the men who rule us that those who have come to buy the land would erode our community's cultures and identities, marry us, add to dissenting votes or take over leadership. Once you address those fears, bring in the issue of land, and always remember, they said, to communicate as if it is the men who came up with the solution, not you, otherwise you will hurt their pride!

In Uwiano, we had frequently discussed the missing women's perspective, and what difference it brought to a peace table. I had wished to have a more solid grounding with facts on the need for women's inclusion and here it was. In 2010, the UN Development Fund for Women found that women comprise less than 10% of negotiators and less than 3% of the signatories to peace agreements. This information would eventually find itself into recommendations for elevating the role of women in mediation that we wrote as the twenty-one women.

While heading the human rights education department at KNCHR, I was constantly put on the spot over the value of the training we offered. This questioning had helped me to attend every workshop or training opportunity thinking of what I could take out of it. This particular colloquium had given me an added value – a focus that I did not have before. I now knew that I would focus on mediation and promotion of dialogue to prevent violence. This would be the reason for my existence at NCIC.

The Woodrow Wilson Centre

One of the other engagements while I was in Washington DC was speaking at the Woodrow Wilson Centre at a forum titled: "Can Women help Make Peace Agreements Sustainable". Our discussion held on 20th January 2011 was coordinated by Carla Koppell, the then

Director of Inclusive Security centred on the fact that women, though very active in civil society and government, were often overlooked as mediators in peace talks. On the panel with me was Luz Mendez of Guatemala, member of the advisory council of the Global Fund for Women, Jacques Paul Klein, former UN Secretary General's Special Representative and Coordinator of the UN operations in Liberia, and Suaad Allami, the Director of Sadr City Women's Centre and Legal Clinic.

I spoke about the origin of ethnic tensions in Kenya that eventually led to the post-election violence of 2007-2008 and the role of the women in the peace negotiations, particularly Graca Machel, wife of the late President Samora Machel of Mozambique and later wife to former President Nelson Mandela of South Africa. I then spoke of the KNDR Agreements outlining the short-term agendas as ending the violence, ending the humanitarian crisis and power sharing. The long-term agendas addressed long-standing issues such as inequality and dealing with historical injustices. I pointed out that they had brought in a number of women as commissioners to implement the agendas. At NCIC, there were five women and four men commissioners. During the question and answer session, the audience noted that Kenya had set a good example in regard to women's inclusion in its peace process.

Speaking to the Kenyan Diaspora in Washington DC²⁴¹

On 6th February 2011, Elkanah Odembo, the Kenyan Ambassador to the US, had invited me to speak to Kenyans living in the US on cohesion initiatives in Kenya at the Embassy. The Ambassador briefed me on the state of cohesion among Kenyans in the US, which was at an all-time low. Kenyans in the US were divided. Back home, necessity had forced many Kenyans to tolerate each other; what was one to do if the doctor was a Luo, the shopkeeper was Kikuyu, and the milk seller a Kalenjin? The differences remained but the need to coexist took priority. In the US, it was different. Kenyans were stuck in hate; each ethnic community operated on their own, and even attended churches that organised services in vernacular. The situation had gotten worse, the Ambassador said, with members of different groups actively seeking ways of destroying others. For example, seeking to establish

those without the requisite immigration documents and reporting to the authorities. Kenyans had exported their hate to the US. When I emailed my colleagues to tell them that I had been invited to speak, they asked me to speak about the ethnic hate that Kenyans in the diaspora spewed on social media. They also asked me to tell the Kenyans in the diaspora that they had allegedly been instrumental in prolonging the PEV by sending funds to warring sides.

My speech covered the work NCIC had done. I also engaged in an extensive question and answer session with the audience.

Even as I spoke, I could see the surprise on the faces in the room. For years, discussing ethnicism in Kenya had not been done openly. The Kenyans in Washington DC on that evening could not imagine anyone speaking with the level of frankness that I spoke to them. They did not know that we had been leading very candid discussions on ethnicity in Kenya. “Nothing on ethnicity was taboo anymore,” I said. “NCIC has learnt to be candid – which may annoy some people – but the task of healing Kenya, as Archbishop Desmond Tutu had said of the truth process in his own country, South Africa, is like cleaning a wound before dressing it. This particular wound, the ethnic wound, had been sewn up with dirt; it needed to be cleaned, and then sewn up again. All this was going to be painful.”

On the whole, the presentation and subsequent question and answer session went very well and I felt that, like an evangelising preacher, not only had I converted a few souls, they would themselves convert more, speaking about the New Kenya, to others in the USA. We might even have a revolution, I mused. One gentleman summed it up pretty well, saying, “slave trade died, ethnicism will die too”.

This view was dispelled on my way out. I was slipping on my warm jacket, ready to step out and leave. I was with Benjamin M Akuete, a Ghanaian friend, who was with me at the talk. One of the Kenyans, already on his way out turned round and began a conversation with Ben.

“Jambo.” he said.

“Jambo.” Ben responded.

“What is your name?” the gentleman asked Ben.

“My name is Ben.” Ben answered.

"No, I mean, what is your name?"

"Ben." he repeated, "My name is Ben."

Clearly exasperated, the gentleman, his voice rising, asked, "Ben, aren't you a true Kenyan? Is Ben your name?"

"Yes." Ben said firmly, "I am Ben; Ben for Benjamin."

Veins stood out on the guy's face as he struggled to suppress his anger. What kind of Kenyan was this Ben, who did not understand the importance of the surname? The surname situated a Kenyan into an ethnic community, where he could be easily judged and placed. What kind of conversation could you have with a man when you did not know his surname, and therefore could not tell where his political and, presumably, his other sensibilities lay?

Spinning on his heel, the gentleman turned towards the entrance, his coat twirling after him and walked away so fast that he almost slid on the floor. He swung the door open, bringing in a gust of icy wind from the wintry January air, and with a final hate laden look at Ben, stomped off. Turning to me, Ben said, clearly, there is work to be done. I could not agree more.

* * *

I had also been invited for dinner at the Ambassador, Elkanah Odembo's house. To my surprise I found members of the Parliamentary Committee on Administration of Justice and Legal Affairs there as well. The Ambassador, Abdikadir Mohammed and I shared a table at the dinner. Mr Abdikadir told us that the correct legal interpretation of the next date of elections according to the new Constitution was 2013, not 2012. He was the first person I heard say so assertively although I had been reading about this debate in Kenyan newspapers. I hoped that was not true for two reasons; first, our terms at NCIC expired in September 2012. I could not imagine that we would not be on hand to midwife a new transition election, yet we had invested so much in conflict prevention initiatives, particularly Uwiano. Second, so many of the projects NCIC was now planning had been timed to build up towards a peaceful election in the presumed August 2012, elections.

The Institute for Justice and Reconciliation – South Africa

In March of the same year, 2011, I left Kenya again, this time for South Africa. I joined the Institute for Justice and Reconciliation (IJR) in Cape Town, South Africa for a fellowship on transitional justice. I spent the week before leaving for Cape Town with Uwiano, trying to quell violence in Mandera where more than 5,500 Kenyans had been reported to have fled due to fighting at the Kenya-Somalia border between Al-Shabaab insurgents and Somalia government forces. UN humanitarian agencies had reported that about 6,000 Somalis had also sought asylum in Kenya. International aid workers had been evacuated from Mandera.²⁴² I was exhausted and only too glad for an opportunity to take a break from Kenya.

The IJR had been established in 2000 in the wake of the South African Truth and Reconciliation Commission (TRC). I was interested in their focus on dealing with the past through the schools' oral history project, identity conversations through the memory, arts and culture project, inter-generational conversations and the community healing project.

The fellowship provided a time for me to reflect, research and write. Beyond mentorship sessions with Arch-Bishop Desmond Tutu, we also visited many historical places, among them Robben Island and saw the cell Mandela had lived in for 27 years, kept intact with his beddings and the bucket that he relieved himself in still in place. Having read Nelson Mandela's *Long Walk to Freedom*, it was a very emotional visit for me.

I was however so shocked to see Mandela's revered garden that he wrote of constantly in his book. The garden gave him sustenance and something to look forward to every day, but I was struck by how tiny the garden was. I had imagined a big garden. At the end of the fellowship, I wrote a policy brief on what I considered most important, a conflict prevention strategy for NCIC leading up to Kenya's next election titled: "*Taming the Demon of Kenya's Election Violence*."²⁴³ In the policy brief, I made recommendations aimed at preventing an escalation of violence into a pre-conflict phase, framed within the political, socio-economic, and ideological context. I also used the policy brief to bring up the issue of the need for inclusion of women in peace initiatives.

At the same, I prepared a draft proposal to IJR for partnership with NCIC and I submitted it to the Director, Fanie Du Toit, who accepted it. I had not discussed the proposal with anyone at NCIC, but from IJR's work, I knew that they would make for great partners. This formed the basis of the collaboration between the two organisations with the following objectives: Create dialogues that will contribute in helping to secure and enhance ethnic and racial harmony and peace. Develop policy advice and analysis that will guide the acceptance of diversity in all aspects of national life. Promote peace, reconciliation, restorative justice and the building of bridges between individuals and communities at a local, national and international level.

The partnership was well received in NCIC. It was approved by the commissioners and led to several joint programmes between the two organisations continuing to date.

* * *

In March 2012, I was invited to South Africa to give perspectives from Kenya as part of an African team on the mandate of the proposed Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence with the Institute for Justice and Reconciliation (IJR) as host. I also went to Harare to speak at a workshop that compared compared the experiences of the coalition governments of Kenya and Zimbabwe.

In addition we were invited as a team in the course of our work as NCIC Commissioners to countries that had tried to deal with issues on ethnic and racial co-existence. In Ireland, we studied the impact of the 1998 Belfast or Good Friday Agreement and the St. Andrews Agreement in 2006. Ireland had become a clearly more peaceful society than in the period referred to as the Troubles. There had been recent episodic clashes mainly over parades and segregation and sectarianism remained. There were however many efforts at dealing with the structural legacies of conflict.²⁴⁴

In Malaysia, ethnic violence in the immediate post-World War II period to the May 1969 communal riots in Kuala Lumpur was largely associated with the formation of the nation-state. This was followed by ethnic conflicts over industrialization, uneven spread of development and abuse of power. Because Malaysia is an inter-ethnic, multi-religious

society, the intra-ethnic conflicts can assume a religious veneer. There were also accounts of conflicts stemming from the patriarchal nature of Malaysian society and conflicts due to the privileging of private property over claims to equity by indigenous peoples. The Government had put in place a New Economic Policy (NEP) to facilitate national unity through the restructuring of society and much work had been done to address structural inequities²⁴⁵.

Australia, a country of a majority migrant population had focussed a lot of its work on migrants. They had been working on an access and equity framework, workplace diversity and Indigenous issues. The Human Rights and Equal Opportunity was among one of the institutions we visited. British settlers had dispossessed indigenous people – also known as Aborigines – who had lived in Australia of their land, we were told, the indigenes were not considered full citizens in law *for a long time*. However Australia later began to work on dismantling discriminatory laws against indigenous people. The country had focused a lot on multiculturalism policies to improve ethnic and racial relations. One of the biggest issues Australia has to deal with is the problem of the *Stolen Generation* referring to the forceful taking away of Aboriginal children from their families to erase their culture and force them to take a white Western culture.

Australia had put in place a national Sorry Day held on 26th May celebrated since 1998. On 13th February 2008, then Australian Prime Minister Kevin Rudd apologised publicly on behalf of the Government to the *Stolen Generations*. We were impressed with a government affirmative action strategy called “Closing the Gap” to reduce disadvantage among Aborigines on especially health, educational and employment outcomes.



President Kibaki (second left) and ODM leader Raila Odinga (second right) sign the agreement creating the post of prime minister after peace talks brokered by chief mediator Kofi Annan and Tanzania President Jakaya Kikwete.
PHOTO/NATION MEDIA GROUP



With NCIC Chairman Dr Mzalendo Kibunjia (second right), Commissioner Halakhe Waqo and Government officers at the then Provincial Commander's office in Embu.



Addressing communities in conflict at Kirundi Market, Meru.



Welcoming Prime Minister Raila Odinga to the Diversity conference as German Ambassador Margit Hellwig-Boette, UNDP Resident Representative Aeneas Chuma and Hon. Mohammed Affey look on.

With Friends of NCIC, Dr Ozonnia Ojielo (sitting on a traditional stool, holding a spear and shield we presented to him before he left to work in New York), Prof Kimani Njogu and Prof Karuti Kanyinga. Irungu Houghton took the photograph.



With Dr Mzalendo Kibunjia and the chair of the Youth fund Mr. Umuro Wario; listening to the views of communities in Mandera.



With Vice Chair Mary Onyango (c), just before she passed on, briefing Vice President Kalonzo Musyoka at the Diversity conference. Mary had come straight from chemotherapy treatment to attend the conference.

Discussing Kenya with Archbishop Desmond Tutu at his office, together with Richard Kananga (centre) of the Rwandan National Reconciliation Commission who hosted 130 Kenyan drama script writing teachers in Rwanda.



Speaking to students at Harvard's John F Kennedy School on my experiences as a woman mediator of armed conflict in January 2011.



In Cape Town discussing Kenya with Justice Albie Sachs, the South African anti-apartheid hero whose hand was blown off during the Apartheid era. Justice Sachs later came to Kenya to vet Judges and Magistrates.



With Cherie Blair, wife of former British Prime Minister Tony Blair.



The Joan Kroc Women Peacemakers Programme (WPM) 2012. L-R Ludmilla Popovicci (Moldova), Jennifer Freeman (then programme officer), Nancy Sanchez (Colombia), myself, Cherie Blair (guest speaker), Dee Aker (founder WPM) and Radha Paudel (Nepal).



With Education Minister Mutula Kilonzo, NCIC Chairman Dr Mzalendo Kibunjia and Dr Julius Jwan (now Director, KICD) in a workshop for curriculum developers discussing how best to incorporate cohesion and integration in the curriculum.



The Uwiano team discussing conflict prevention initiatives for the 2013 elections with Police Inspector General David Kimaiyo (c). Others are [Left] Erastus Ethekeon, (UNDP), Steve Kirimi (Peace Net), James Odong (UNDP) and author; [Right] SK Maina (NSC), Commissioner Mohammed Alawi (IEBC), Dr Roba Sharamo (UNDP) and Hassan Mohammed (CEO, NCIC).

With Dr. Mary Mwiandi, Chairperson of the History and Archaeology Department, University of Nairobi, presenting a gift of NCIC cloth to Rebecca Lolosooli, founder of the Women's Village in Samburu.





With Lt. Gen. Daniel Opande (Rtd.) singing the national anthem in a conflict prevention meeting in Nairobi, 2013.



Kibera, Nairobi, releasing doves into the air to crown our conflict prevention activities before the 2013 elections.



Leading a peace march in Nairobi.



Happily celebrating the International Day of Peace on 21st September 2014 with my sister Wakonyo Nyingi (r). The function bringing together multi-ethnic women was organised by Jane Anyango (c) Ironically, Al-Shabaab had planned an attack on the Westgate Mall on the same day, which led to 67 deaths.



Goodwill Ambassadors' Workshop held at the Great Rift Valley Lodge & Golf Resort, Naivasha from 27th–30th January 2013.



Speaking at Harvard University's John F Kennedy School in 2016 on my experiences as a mediator of armed conflict. I was hosted by Ambassador Swanee Hunt (extreme right) who is also the chairperson of Institute for Inclusive Security.



In Canada after receiving the Global Pluralism Award with His Highness the Aga Khan (L) and the Chief Justice of Canada Beverley McLachlin.



With Peter Dimitroff (L) Joe Clark, former Prime Minister of Canada and Chair of the Jury of the Global Pluralism Award and Jacqueline O'Neill. Peter and Jacqueline O'Neill represented my family at the award ceremony.



The group of Concerned Citizens led by Lt. Gen. Daniel Opande (Rtd.) (in yellow tie) with Dr Ozonnia Ojielo (extreme right) and former Presidents John Mahama of Ghana and Thabo Mbeki (c) of South Africa during the August 2017 Kenyan elections.

Chapter 25

People's Conferences: Ethnic and Race Relations Policy

The Commission shall initiate, lobby for and advocate for policy, legal or administrative reforms on issues affecting ethnic relations.

– National Cohesion and Integration Act No. 12 of 2008, 25 (2) (n)

Although the new Constitution had provided hope for a unified nation, the country still required input and perspectives from professionals countrywide on what a national ethnic and race relations' policy for Kenya could look like. The Road to Cohesion television shows had ensured participation from a cross section of Kenyans but we now needed the participation of professionals. I developed a concept paper proposing that NCIC should publicly organise regional diversity conversations on ethnic and racial concerns in Nairobi, South Rift, Upper Eastern, Lower Eastern, Coast, Lodwar, Nyanza, Western, Central and North Eastern regions. The publicity would help to reduce tension and increase trust among ethnic, racial and religious groups and relate solutions to our new Constitution. This was important, as political temperatures were very high.

Things were now very difficult between Raila Odinga, Uhuru Kenyatta and William Ruto on the political scene. With the naming by Ocampo of the cases to proceed to trial, the enmity between Uhuru Kenyatta, William Ruto and Raila Odinga had exploded into the open. They began to exchange words openly. The media was on a roll as newspaper sales shot up. The country meanwhile was on edge. When the leaders fought, the animosity immediately trickled down to the masses and so we were again receiving complaints about the Luo living in predominantly Kikuyu or Kalenjin areas receiving hate leaflets and being asked to leave and the Kikuyu and Kalenjin living in predominantly Luo areas getting the same treatment. Tensions began

to build up between the Nandi, a Kalenjin community and the Luo on the Muhoroni border.

On 1st March 2011, NCIC wrote notices to Prime Minister Raila Odinga, Deputy Prime Minister Uhuru Kenyatta and Eldoret North MP William Ruto asking them to end their public spat.

The matter would have ended there, as so many other cessation notices to ministers and MPs had done before. Although we wrote to them in confidence, they responded to us through reports in the media such as this:

“Deputy Prime Minister Uhuru Kenyatta and Eldoret North MP William Ruto said they would defy the order by the National Cohesion and Integration Commission (NCIC) to stop abusing Prime Minister Raila Odinga. They criticised NCIC (---) for warning them without taking action against Raila. “NCIC says we should stop using abusive language, but Raila has been abusing us also. And when we respond, they write to us. We are responding because someone did not do his job. The other day he called us drunkards, thieves and bhang smokers. Instead of writing to Raila, they write to us.”²⁴⁶

Prime Minister Raila Odinga in turn wrote a letter to NCIC and ensured he publicised it by giving a copy to the media. The media in turn reported in part that the Prime Minister had denied engaging in hate speech and “that his utterances at various public functions did not amount to hate speech and were not a threat to peace and harmony in the country”.²⁴⁷

Six days after we sent out the cessation notice, President Kibaki also cautioned the leaders to stop insulting each other. His comments were widely reported in the media.

“President Kibaki has urged leaders to respect each other and avoid foul language in public. He said it was time leaders learnt how to respect each other and unite all Kenyans without discrimination. ... Kibaki warned that public pronouncements meant to belittle other leaders were a drawback to development. “*Tuache mambo ya kutukanana. Wengine wanaona eti ni wakubwa sana* (Let’s shun abusive language. Some leaders think they are more powerful than others),” he said. “Public name calling and use of abusive language should end and we go on with life.” he added. Kibaki’s comments come in the wake of a public spat

between Prime Minister Raila Odinga, Finance Minister and Deputy Prime Minister Uhuru Kenyatta and former Higher Education Minister and Eldoret North MP William Ruto. Last week, the National Cohesion and Integration Commission (NCIC) warned them against public insults, leading to a halt to a fortnight long of escapades.”²⁴⁸

The Standard supported our action in an editorial on 10th April 2011 saying:

“The ICC trials have gripped the attention of the country as politicians have used the process to gain political mileage. There is absolutely nothing wrong with politicians holding political rallies to seek support. However, the speeches at the rallies have, unfortunately, been dominated by threats, unsubstantiated allegations, raw lies and tribal vitriol. We call on politicians to avoid putting the country into the campaign mode. One would have thought that politicians learnt the lessons of the negative ethnicity that led to post-election violence.... Ours is a wounded nation that has not yet healed and evoking tribal emotions would only be detrimental to the fragile national cohesion”.

The regional diversity conversations would culminate in a national conference that we named the “People’s Conference”.

The Nairobi Diversity Conversation

The first Diversity Conversation was held in Nairobi on 16th August 2011 at the KICC. We travelled to all the diversity conversations countrywide with Bobby Mkangi, former Commissioner with the CoE who situated the conversations within the Constitution, Prof Vincent Simiyu, a historian, the NCIC Chairman Mzalendo Kibunjia and staff Phoebe Nadupoi, Rosemary Were and Mwanamisi Mdudu. In Nairobi other speakers were former Head of Civil Service Richard Leakey and the UN Rapporteur on racism, racial discrimination and xenophobia, Dr Mutuma Ruteere. Prof Kimani Njogu, Prof Olubayi Olubayi and myself moderated the sessions. We introduced the objectives and emphasised that the forum provided an opportunity to re-write history.

The conference made a number of recommendations, among them; the need to redefine identity and the values we attach to it as both as a fluid and social construct; the requirement by the citizens of the

state to promote nationhood; We can purposively do a set of things as individuals, communities and as Kenyans but the process of creating Kenya is possible if we reach out to others; we must de-emphasise ethnic identity and promote our Kenyan identity; we need to transcend ethnic and racial boundaries and craft solutions for ourselves on how to deal with our differences. Lastly, there is need for social and cultural reconstruction of the country. This includes re-writing Kenya's history to capture the untold stories and to rectify the current narrative and ensure the inclusion of everyone.

South Rift Diversity Conversations

The South Rift diversity conversations took place on 4th October 2011, at Njoro. The panellists were Koitamet Ole Kina, Tirop arap Kitur, Prof Mary Getui and Dr Eric Bor. The discussions focused on the issues of the grievances by the Maasai community, *beginning with the purported signing of a treaty between the British on the one hand and the Maasai community on the other*. The panel agreed on many issues including that Maasai land had been used as national resources such as national parks without infrastructural development and that most Maasai leaders were also guilty of participating in these conspiracies against their own people.

The conflict in the Trans Mara region of the South Rift between the Kuria, Maasai and Kipsigis is caused by poverty, competition over pasture and water, political incitement, boundary issues, security, cattle rustling and restocking. Suggestions to solve the problems between the conflicting communities included a conflict and trauma management workshop for victims, good neighbourhood meetings along common boundaries and assisting the affected households to minimise shocks and guarantee food security.

The political elite had exploited the Kalenjin identity to the full for purposes of mobilizing the ordinary Kalenjin and against the so-called big ethnic communities of Luo, Luhya and Kikuyu. Intermarriages had been the mediums through which ethnic groups either increased their numbers or made peace with their neighbours. The rate of intermarriages tended to be higher in the urban areas and the borderline areas. There was, however, less intermarriage between the Kalenjin and the Maasai, just as there were fewer ones between the Kalenjin and the

Luo. The effect of this was that the Luo and Kalenjin; Kalenjin and Maasai were more likely to engage in conflict than Kalenjin and Kisii or Kalenjin and Maasai. The Kalenjin elite had been so successful in projecting their struggle for power and resources against the other elite – be they Luo or Kikuyu – that the peasants had identified this struggle as theirs. This stereotypes entrenched the need for the so called “land clashes” of 1969 (Kalenjin versus Kikuyu in Kipkelion and Londiani); 1992 (Kalenjin versus Kikuyu, and Kalenjin versus Kisii in Nandi, Kericho and Molo); 1997 (Kalenjin versus Kikuyu clashes in Londiani and Molo); and 2007 (Kalenjin versus Kisii and Kalenjin versus Kikuyu in Molo, Kericho, Sotik, Nakuru, Burnt Forest, Uasin Gishu and many other places.)

Solutions included an intellectual and academic onslaught that would prioritise the growth of the Kenyan economy so that inequalities were not used to fuel war; equal utilisation of all national natural resources, the need to industrialise and embrace technology; and addressing the all-important question of land reform – in a broad, national and progressive perspective taking into account local contexts.

Upper Eastern Diversity Conversations

The Upper Eastern diversity conversation was held on 6th October 2011 in Isiolo. The panellists were Commissioner Halakhe Waqo, Dr Hukka Wario, Tiyah Galgalo (who later became the Member of Parliament women representative), Dr Hussein Abdullahi Mahmoud, Fatuma Dullo (who later became one of the first women Senators in Kenya) and Lawrence Mute.

Conflict drivers in Isiolo included droughts, availability of illegal small arms and light weapons and insufficient security. Cattle rustling in the name of “livestock re-stocking raids and counter raids,” ethnic and community mistrust and hatred especially in competition for political seats also contributed to the conflict. Fear of marginalisation by the communities with lesser voting numbers led to fear of exclusion from key elective positions. There was inadequate information on what the future held for conservative Isiolo town, its residents and the pastoralist communities in its environs as the town was slated to be transformed into a resort city in Kenya’s vision 2030 and a key tourist centre.

The spill over effects of Government neglect was seen with the ease with which militia groups like Al-Shabaab, Oromo Liberation Front (OLF) and the Ogaden National Liberation Front (ONLF) operated at ease in the North. The Somalia state collapse had fuelled further insecurity.

Rural livelihoods were linked to local conflicts, regional and national politics and policies. Communal conflicts included the Ajuran-Borana-Degodia conflicts, the Borana-Gabra-Rendille conflicts, the Borana-Gabra conflict and the Turbi massacre of 2005 that implicated politicians and administrators. There was also misuse and abuse of power particularly through the manipulative behaviour of the Provincial Administration.

Government response to conflict was slow and the communities had learnt how to solve their issues through reconciliation meetings led by elders. The region was mainly inaccessible particularly during the rainy season, which had driven up the cost of living.

Opportunities included the potential of the region as a livestock based economy, support for markets and regional integration. To end ethnic conflicts, there was need to solve communal conflicts; promote identity markers such as languages, cultural ceremonies, social events, clothing and ornaments; exploit cross-border networks and links and shun political manipulation and vote for the right people. The state needed to open up the area through infrastructural development and policies of inclusion; proper management of borders and border affairs and improvement of security and by not arming one group against the other but by protecting all.

Policy options included awareness and identification of conflict hot spots, establishment of full-scale security apparatus and curbing corruption, meaningful development initiatives, accountability and transparency, addressing of second-class citizenship attitudes and resolution of the Somalia conflict and Ethiopian political problems.

Lower Eastern Diversity Conversations

The Lower Eastern conversations were held in Machakos town on 8th October 2011. The panellists were Prof Geoffrey Muluvi, Prof Dorothy Mutisya, Ms. Koki Muli, Prof Kivutha Kibwana (who later

became Governor of Makueni County) Dr Mary Mwiandi and Dr Hamisi Babusa.

Grievances communities in the region had against other communities included boundaries, politics, resources, inter-ethnic and intra –ethnic grievances. The hotspots in the boundary conflicts were between Kitui and Tana River District, Makueni and Taita Taveta, Kitui East and Kora National Reserve as well as Kitui and Tana River District. These boundary differences had prompted conflict between the Kamba and the Somali communities.

On resource related conflicts, the focus was mainly on sand harvesting with the focal point being the seasonal rivers in the region. The sand was harvested for sale to the booming building industry. The effects were that rivers were drying and this in turn led to a serious shortage of water that was an already scarce resource.

In Tana River ethnic loyalties pitted the Orma, Wardey, Somali and Pokomo either against each other or sometimes against one of them. They fought over land ownership issues, complicated by clashes between agricultural and pastoralist lifestyles and clashes between village vigilantes.

The Pokomo ethnic community was itself not united, because it consisted of different sub sets such as the Malajuu, Malachini, Wasanye and Malakote. The grievances that the Tana River people had towards the state had to do with land ownership and land utilisation, lack of schools and universities, insecurity, food security, poverty, the use of River Tana for irrigation, lack of infrastructure (impassable roads, lack of electricity and water) and unutilised beach resources.

Solutions included the full implementation of the sand harvesting rule of 2007; provision of adequate public education; invoking of the Children Act to give them protection from abuse and exploitation; categorisation of sand as a mineral under the mineral Act to give it legislative protection like other minerals and the formation of cooperatives for harvesting sand for sustainable harvesting and sharing of benefits.

Overall solutions included, firm, decisive leadership, inter-community dialogues cultural and development initiatives, increase in formal and informal education, provision of basic services by Government, protection of human rights and fair and equitable distribution of resources and opportunities, issuance of land ownership documents,

beefing up security in the area to counter banditry, full utilisation of the land, river, beaches and sea. Other issues included improvement of education institutions and infrastructure.

Coast Diversity Conversations

The Coast diversity conversation was held on 24th October 2011 at the Mombasa Polytechnic University. The panellists were Prof Abdullah Naji Said, Dr Halimu Shauri, Owen Yaa Baa, Najya Mohammed, Paul Goldsmith and Mwambi Mwasaru.

There were clear problems in the Coast based on issues of intra and inter regional demography, a very distinct line between the indigenous Kenyan coastal people and the Kenyans from up country. The indigenous people felt marginalised in many ways particularly in employment practices and property ownership. Clan, ethnic and racial differences had been used by politicians to increase mistrust and tension in the region. Land ownership was the key grievance at the Coast. This explained the existence of the Coast advocates to secede from Kenya. The history of the Coastal people had also been distorted and rewritten in ways that did not reflect the true picture. The indigenous Waswahili people had been forgotten. The region was defined by poor infrastructure particularly in the Coast Hinterlands and Coastal Belt Areas.

Solutions included a need for differentiation by the aggrieved Communities between Government Policy and whims and prejudices of executing civil servants/administrators; manifested in for example, discrimination in the issuance of birth certificates, identity cards, passports, and title deeds. The coastal elites needed to vigorously wage a campaign against ethnicism, as a political tool of control and drive the process of seeking social justice for communities and address the real or imagined perception of being alienated from their social ownership of land and key resources.

The panellists delivered a warning. The Coast was a time bomb. In the upcoming general elections there were high expectations of violence. Conventional peace work among the youth was not likely to be effective.

Diversity Conversations – Lodwar

The Diversity Conversations were held in on 8th November 2011. The panellists were Ekuru Aukot, (who contested for the Presidency in 2017) Dominic Ruto Pkalya and Joyce Emanikor (who later became Member of Parliament representing women).

The Turkana, Pokot, Kalenjin and Luhya are the numerically dominant Cross-Border communities in this region. The better part of the history of cross-border communities in the North Rift is unfortunately synonymous with conflict manifested in a number of ways such as livestock rustling and thefts. In the year 2011 alone, there had been over 1,000 conflict incidents and deaths recorded by the CEWARN. These conflicts involved the; Dassenatch (Merille), Inyang'atom (Dong'iro), Toposa, Diding'a, Jie, Dodoth, Matheniko (whose issues were addressed in the 1973 Lokirama Accord), Tepeth, Bokora, Pian, Pokot (Kenya and Uganda), Sabiny and Turkana vs Pokot.

The communities fought for several reasons that included; competition over control and access of dwindling grazing resources/opportunities such as jobs in Turkwell (the KenGen Plant), boundary/grazing disputes, availability of illegal small arms and light weapons, refugees versus host community tensions (Turkana and West Pokot Counties had a combined total of 71,458 IDPs) national Government neglect as the North Rift was a case of classical retreat of the state. This included the instruments of preserving law and order and spurring social cultural, political and economic growth and poor infrastructure. Bad roads had hampered socio-economic development and security. Government had dealt with insecurity issues in the region casually with some criminal acts interpreted as cultural issues, hence trivializing their gravity.

To address the challenges, the following measures were suggested; Support for cross-border peace dialogues; strengthening and appreciating the role of traditional conflict resolution institutions to promote cross-border cohesion such as between the Ateker/Karamoja cluster community; enhancing the role of peace accords and embracing alternative livelihoods – commercial livestock keeping and agriculture (out of 250,000 acres of land in Turkana, only 5,000 had been used for crop growing – Standard newspaper, 10.08/2011). Agricultural potential areas included but were not limited to Katilu, Moilem, Wei Wei, and Naparkocha).

Action that could be taken by communities included; conducting peace caravans consisting of professionals from the warring communities, demystifying unfounded prejudices and stereotypes through peace education and exchange visits, demanding accountability from local leadership and enhancing and appreciating the role of women/youth in peace building.

Action that the government could take included implementation of the Constitution and promotion of national values and nationhood. National borders needed to be secured for the good of cross-border peace and cohesion. The government could also in collaboration with IGAD member states, initiate and support trans-boundary natural resources (grazing) management and build abattoirs.

Nyanza Diversity Conversations

The panellists included Prof Peter Wanyande, Prof Jacqueline Oduol, Prof Chacha Nyaigotti Chacha, Prof. Constantine Nyamboga and Dr Charles Nyambuga.

Issues discussed in the diversity conversation included marginalisation, both politically and economically, high level of unemployment, poor infrastructure and use of outlawed gangs to cause harm. This included groups defined by criminal nature, age and social status such as for the Luo, Mayouth or Maboys (found in urban areas in Kisumu) and Baghdad Boys (Nairobi and Kisumu) mainly Luo. For the Kisii, there was Kebago (Gusii word for organised thugs) male and female mature people organised for the purpose of harming others, Amachuma, any tough youth or adult hanging around politicians or influential people during political campaigns, offering their fees to the highest bidder; Sungu Sungu, a vigilante group sanctioned at village community level meant initially for community policing but now misused to attack people suspected of witchcraft and Chinkororo, traditional warriors of the Abagusii people, mobilised if there was an ethnic conflict.

Solutions included leaders ensuring proper management and equitable allocation of public resources as an imperative in making all Kenyans feel equal. Nyanza needed sincere inter-ethnic dialogue, purposeful and continuous public education on cohesion and finally, proper security measures to arrest the need for armed ethnic gangs.

Western Diversity Conversations

The panellists were Prof. Helen Mwanzi, Dr Mukhisa Kituyi (who later became Secretary General of the United Nations Conference on Trade and Development UNCTAD) Dr Godwin Murunga (who later became Executive Secretary of the Council for Development of Social Science Research in Africa) and Prof. Olubayi Olubayi. The grievances included poor infrastructure, unemployment, insecurity, police harassment of cross border communities and historical land injustices. Western Kenya region is comprised of many ethnic communities, each of them depicting multiple identities with the Luhya consisting of several ethnic communities such as the Maragoli or Bukusu. The following key considerations were proposed:

Kenyans should acknowledge and guide their discussions on the premise that people carry multiple identities; the national language, Kiswahili, should be utilised to addressing national cohesion; the national values provided in Article 10 of the Constitution of Kenya 2010 should be taught as part of the school curriculum; the concept of open counties should be adopted. Counties should be inclusive and embrace ethnic diversity; Kenyans should desist from the discussions on who are or are not 'indigenous' to an area since such discussions divide people in terms of 'insiders' and 'outsiders'.

There is need for people to embrace and even teach in school the Constitutional right of an individual to work, live and own property in any part of the country, including the fact that there are no 'foreign' Kenyans in the country; Intermarriages should be promoted, encouraged and even rewarded; In addition to having our respective ethnic culture, we also need to develop a national culture; Ancient cultural practices that create hostilities among ethnic groups should be shunned and Kenyans should be more vigilant with a view to ensure that ultimately we evolve from ethnic communities to a moral community.

Central Diversity Conversations

The panellists were Prof Thairu Kihumbu, Dr Grace Wamue and Dr Felix Kiruthu. There had been a huge colonial impact on Kikuyu identity due to the geographical proximity to Nairobi, which was the headquarters of white settlers. There was land alienation by colonial

government legalised by the Crown lands Ordinance of 1915, creation of native reserves, taxes and wage labour. The white settlers forced the Kikuyu out of their fertile lands. This resulted in the migration of the Kikuyu into the Rift Valley/Urban centres.

There were also challenges in the post-independence era of the mainly Kikuyu home guards and colonial loyalists disinheriting the Mau Mau freedom fighters. The Swynnerton Plan (1954) side-lined the Mau Mau during land adjudication in Central Kenya. There is therefore intra-Kikuyu disunity. The loyalists got civil service jobs, accumulated land and got businesses too. The Mau Mau remained banned until the NARC government came to power in 2003.

The Kikuyu community was severely weakened during the Moi Presidency by the fleecing of the Cooperative movement, the grabbing of public land/ buildings all in the 1980s, rural poverty, drunkenness among young men and idleness as well as upsurge of the Mungiki movement turned militia.

Suggested interventions included; reform of the educational system, dealing with alcoholism and address issues raised by Mungiki – to foster nationalism; hope and positive interaction among the youth; shunning of culture of individualism in Central Kenya and improve support to extended family and society. Social engineering was required to enhance national values such as fairness and family unity as well as diversification of agriculture to optimise output from small portions of land;

Diversity conversations North Eastern

Panellists in North Eastern were Abdullahi Abdi, and Hamara Ibrahim Adan. The issues raised included, marginalisation, clanism and its use as a vehicle by the elites in the region to rise or stay in political power, corruption and sale of relief food, ethnic based politics, minority clans ignored and denied opportunities in employment; issuance of national identity cards without considering the pastoralist lifestyle of the residents. Denial of identification documents had an implication on the residents' access to employment and their participation in the voting processes. Further the process of vetting whether they were Kenyan-Somali or Somalia-Somali was flawed and caused delay. There

were disputes regarding electoral boundaries and historical injustices including massacres Wagalla (1984), Malka Mali (1980) and Bura Kartasi (1989). There was also stereotyping with Somalis portrayed as hostile and in most cases associated with terror groups such as Shifta, Al-Shabaab and other militias.

Solutions included trauma healing, justice, equality, security and compensation for the victims.

* * *

At the end of the Diversity regional conversations, I was exhausted in spirit, having traversed over the whole of Kenya again, but extremely buoyed by the results. Prof Kimani Njogu, Prof Olubayi Olubayi and I summarised the recommendations into an ethnic and race relations' policy. The overall aim of the policy was to establish an ethnic and race relations basis for building a cohesive and integrated Kenyan society in which individuals from all ethnic and racial groups are considered equals, coexist peacefully, access equal opportunity, and cherished the rule of law. The document consisted of sixty eight policy statements and was a first for Kenya. We invited various stakeholders from civil society, faiths, business and private sector community to review the draft and to make suggestions for improvement before publishing it.

The Ethnic and Race Relations Policy

The Ethnic and Race Relations Policy defined several terms²⁴⁹ such as ethnic group, ethnicity and ethnicism. The organising principle for the policy was *ethnic and racial Inclusion*, the idea and practice of deliberately ensuring that qualified people from all ethnic and racial groups resident in a county or a nation are represented in employment, governance structures, planning, development initiatives, public deliberations, democratic arrangements and national educational institutions. The policy also required that county governments and various public and private institutions and companies develop their own ethnic and race relations policies specific to each entity but based on the policy.

The policy statements were based directly or indirectly on Articles of the Constitution that form a strong constitutional basis for coexistence and positive ethnic and race relations; and on the NCI Act , No. 12 of

2008, Kenya Vision 2030, Kenyan statutory law and international laws as demanded by Article 2 of the Constitution of Kenya 2010. We expected proper implementation of the policy to assist Kenya in entrenching its new Constitution, proactively mitigating conflict, building peace and ensuring cohesion (annex 9). The policy statements were as follows:

1. In accordance with Chapter Two, Article 7 (1) of the Constitution, which establishes Kiswahili as the national language of Kenya, and in recognition of the fact that **a multi-ethnic and multi-racial country needs a common language for inclusive communication and for the construction of a common national culture**, the national and county governments shall ensure that all public and private educational institutions teach Kiswahili.
2. In accordance with Chapter one, Article 2 (4) of the Constitution, which outlaws any customary practices that are inconsistent with the Constitution, the national and county governments shall ensure that **cultural or customary practices that promote hostilities between communities are outlawed** and prevented from occurring.
3. In accordance with the Preamble of the Constitution on diversity, and in accordance with the Fourth Schedule of the Constitution on distribution of functions, the national and county governments shall explicitly promote the understanding of and respect for diversity by **budgeting** for programmes that **celebrate diversity and unity**; and by **sponsoring exhibitions in museums, libraries and other public spaces that showcase all communities** in the country in ways that are equitable and encourage mutual understanding and tolerance.
4. In accordance with Chapter Two, Article 9 of the Constitution, which lists the national symbols and national days around which all Kenyans rally in promoting national Kenyan culture, the national and county governments shall popularise and show respect for the use of national symbols and days and **encourage the celebration of our national history**.
5. In accordance with Chapter Two, Article 10 of the Constitution, on national values and principles, **all county governments shall**

develop and implement ethnic and race relations policies that are specific to the county and based on this policy.

6. In accordance with Chapter Two, Article 10 of the Constitution, on national values and principles, and in the interest of promoting positive inter-ethnic and inter-racial interactions, all county governments shall **develop and budget for common public recreation and interaction spaces such as social halls, sports fields, parks, libraries and museums.**
7. In accordance with Chapter Six of the Constitution on leadership and integrity, the national and county governments shall remove from employment persons who are convicted of crimes, and shall require that national or county officials and staff **serve all Kenyan citizens equally without discriminating on the basis of ethnicity or race.**
8. In accordance with Chapter Six of the Constitution on leadership and integrity, the **national and county governments shall set up mechanisms for intra- and inter- community dialogues** in order to increase understanding, reduce mistrust and anxieties and mitigate conflicts.
9. In accordance with Chapter Six of the Constitution on leadership and integrity, **leaders at the national and county governments shall prioritise, initiate and lead dialogue** in order to ensure ethnic and racial inclusion.
10. In accordance with Chapter Two, Article 11 which emphasises the on-going efforts towards building a cohesive multi-ethnic and multi-racial nation that enshrines “the cumulative civilisation of the Kenyan people and nation,” **the national and county governments shall promote all efforts towards recognition, acknowledgement and inclusion of minority ethnic or racial groups** in all cultural, social, political and economic policies and programmes.
11. In accordance with Chapter Three, Articles 14 and 15 which indicate that citizenship in Kenya is by birth or registration, not by specific ethnic or racial affiliation, and in accordance with Chapter Four, Article 53(a) which indicates that every child has

- a right to a name and a nationality from birth, the national and county governments shall ensure equal protection for all citizens from all ethnic and racial communities; and **protect people with legitimate citizenship or residency claims from statelessness.**
12. In accordance with Chapter Four, Article 21 (3) which promotes democracy and inclusion, the national and county governments shall ensure that **all state organs and all public officers have the duty to address the needs of all groups within society** including minorities, marginalised communities, and members of particular ethnic, religious, and cultural communities.
 13. In accordance with Chapter Four, Article 24 (1) d of the Constitution, the national and county governments shall ensure that an individual's enjoyment of his or her fundamental Constitutional rights does not **“prejudice the rights and fundamental freedoms of others.”**
 14. In accordance with Chapter Four, Article 27 of the Constitution, which provides for “equality and freedom from discrimination,” and for affirmative action, the national and county governments shall **ensure ethnic and racial inclusion** and outlaw ethnic and racial discrimination.
 15. In accordance with Chapter Four, Article 56 of the Constitution, on affirmative action, the national and county governments shall establish and promote **affirmative action programmes for minorities and groups that were historically marginalised** within the nation or the county.
 16. In accordance with Chapter Four, Article 28 of the Constitution on human dignity, the national and county governments shall ensure that all persons, regardless of gender, ethnicity or race, are treated as being equal before the law and as deserving **equal access to public services and protections.**
 17. In accordance with Chapter Four, Article 39 (3) of the Constitution, which guarantees every Kenyan citizen the right to live and work in any part of Kenya, the county governments **shall provide equal protection and equality of opportunity to all Kenyan citizens who choose to live or to work in that particular county regardless of their ethnic or racial**

background. County governments shall not discriminate on the basis of ethnicity or race.

18. In accordance with Chapter Four, Article 40 (1) b of the Constitution, which guarantees Kenyan citizens the right to own property in any part of Kenya, **county governments shall protect the property rights of all Kenyan citizens** within their counties regardless of the citizen's ethnicity or race.
19. In accordance with Chapter Four, Article 53 (1) b of the Constitution, on basic education, the national and county governments shall ensure that every Kenyan child is provided with a **free and compulsory basic education** in which children must acquire knowledge of Kenyan history, geography, literacy, numeracy, Kiswahili language, and national values.
20. In accordance with Chapter Two, Article 10 of the Constitution, on national values and principles, students shall be encouraged to organise their co-curricular activities along disciplines and interests such as the arts, the sciences, games and sports and simultaneously **discouraged from forming ethnic-based organisations.**
21. In accordance with Chapter Two, Article 10 of the Constitution, on national values and principles, **educational institutions shall be zones of safety and security for children and communities** and shall be protected at all times from violations, attacks and destruction.
22. In accordance with Chapter Two, Article 10 of the Constitution, on national values and principles, educational institutions shall be required to **emphasise co-curricular activities including sports, drama, debate and music** in order to enhance the development of learners, to teach the national values and to develop the spirit of inclusivity, tolerance and respect for ethnic, racial and religious diversity.
23. All **educational institutions shall develop ethnic and race relation's policies** that are specific to the institution and based on this policy.
24. In accordance with the NCI Act, No. 12 of 2008, and Chapter five, Articles 60 to 68 of the Constitution of Kenya which deal

with land rights and issues, the national government shall establish and maintain a land commission that is empowered to **deal with the numerous historical grievances that various ethnic communities have on the questions of land ownership and land rights.**

25. In accordance with Chapter Five, Article 69 of the Constitution, on natural resources, the national and county governments shall **ensure equitable sharing of the benefits accruing from natural resources** to all citizens without discriminating on the basis of ethnicity or race.
26. In accordance with Chapter Seven, Article 91 on political parties, the national government shall **outlaw ethnic-based political parties**, ensure regular audits of all political parties and encourage political parties to promote good ethnic and race relations.
27. In accordance with Chapter Eight, Article 100 d and e of the Constitution, on diversity in Parliament, Parliament shall **enact legislation that promotes the representation in Parliament of minorities and marginalised communities.**
28. In accordance with Section 25 (2) of the National Cohesion and Integration Act No. 12 of 2008, which directs NCIC to engage with the legislative arm of Government, Parliament shall **maintain a standing committee of Parliament that is directed to work on matters of cohesion, integration, and equal opportunity.**
29. In accordance with Chapter nine, Article 131 (2) c, d, and e, which outline the duties of the president, **the president shall promote positive ethnic and race relations** and enhance the unity of the nation.
30. In accordance with Chapter ten, Article 159 (1) which states that judicial authority is derived from the people, and Article 159 (2) e which states that the judiciary shall promote and protect the purpose and principles of the Constitution, the **judiciary is obligated to protect all citizens equally** regardless of social class, religion, ethnicity or race.
31. In accordance with Section 25 (2) g of the NCI Act No 12 of 2008, the **judiciary shall develop mechanisms for promoting**

“arbitration, conciliation, mediation and similar forms of dispute resolution mechanisms in order to secure and enhance ethnic and racial harmony and peace”

32. In accordance with Chapter Eleven on devolved government, the national and the county governments are constitutionally obligated to “foster national unity by recognizing diversity” and to ensure that **government and services are brought closer to all individuals and communities**, and to “ensure equitable sharing of national and local resources throughout Kenya.”
33. In accordance with Chapter Twelve, Article 201 on the principles of public finance, the national and county governments shall ensure that the **“public finance system shall promote an equitable society”** and ensure that marginalised groups and areas are properly served.
34. In accordance with Chapter Twelve, Article 202 on national revenue, the national government shall ensure that **revenue raised nationally shall be shared equitably among the national and county governments.**
35. In accordance with Chapter Twelve, Article 203 (1) g and h, on economic disparities, the national government shall work towards **ending economic disparities within and among counties** and establish affirmative action programs to assist historically “disadvantaged areas and groups.”
36. In accordance with Chapter twelve, Article 203 (2) on national revenue, the **national government shall transfer at least 15% of revenue** raised by the national government to county governments.
37. In accordance with Chapter Twelve, Article 204 which establishes the Equalisation Fund “into which shall be paid one half per cent of all revenue collected by the national government each year,” the **national and county governments shall provide basic services including education, water, roads, health facilities and electricity to marginalised areas** in the interest of raising all regions and communities of the country to similar levels of socio-economic development.

38. In accordance with Chapter twelve, Article 227 (2) b on procurement of public goods and services, the national and county governments shall **take into account the protection and advancement of previously marginalised groups in all matters of procurement.**
39. In accordance with Chapter Thirteen, Article 232 on the values and principles of public service, the national and county governments shall operate in ways that promote fairness, justice, equality of opportunity in all matters, and **equality of access to basic services** to all citizens regardless of their ethnicity or race.
40. In accordance with Chapter fourteen, Article 238 (2) c and d on national security, the national government shall establish **national security organs that reflect the ethnic diversity of Kenya** and ensure “equitable proportions in recruitment.”
41. In accordance with Section 7(2) of the NCI Act No.12 of 2008 on discrimination in employment, the national and county governments shall ensure that **“no public establishment shall have more than one third of its staff from the same ethnic community.”** Counties shall draw their staff from all over the country.
42. In accordance with Chapter Fourteen, Article 241 (4) on the Kenya Defence Forces, the national government shall ensure that the **“composition of the command of the Defence Forces shall reflect the regional and ethnic diversity of the people of Kenya.”**
43. In accordance with Chapter fourteen, Article 246 (4) on the Police Service, the national government shall ensure that the **“composition of the National Police Service shall reflect the regional and ethnic diversity of the people of Kenya.”**
44. In accordance with Chapter Fifteen, Article 250 (4) on Commissions and Independent Offices, the national government shall ensure that **appointments to Commissions and Independent Offices** “reflect the regional and ethnic diversity of the people of Kenya.”
45. The **National Cohesion and Integration Commission** shall remain fully accessible to individuals and communities that wish

to bring their grievances to the attention of national and county governments.

46. In accordance with Section 13 of the NCI Act No 12 of 2008 and Chapter Four, Article 33 (2) of the Constitution of Kenya, both of which outlaw hate speech, **the national and county governments shall not tolerate hate speech** and will put in place appropriate legislation and other mechanisms to discourage it.
47. In accordance with Chapter One of the Constitution, on supremacy of the Constitution, **all communities shall live within the framework provided by the Constitution and Laws of Kenya** in ways that enhance the welfare of the specific community without violating the rights of other individuals and communities.
48. In Accordance with Section 25 (2) c of the NCI Act No 12 of 2008, **NCIC will work with the leaders of various communities to build linkages** among various religious, ethnic and racial communities.
49. In accordance with Chapter 14 of the Constitution on national security, **national and county governments shall work together to determine the genesis of organised militias**, disarm and demobilise them and punish members of the organised militias for their criminal activities; and take measures to rehabilitate and reintegrate members of the organised militias into society.
50. In Accordance with Section 25 (1) of the NCI Act No 12 of 2008, on the object and purpose for which NCIC is established, NCIC shall **publicise and advocate the knowledge and practice of civility** by all individuals as an enabler of peaceful coexistence.
51. In accordance with the Preamble of the Constitution on diversity, and in accordance with Section 25(2) 0, of the NCI Act No 12 of 2008, **medium and large private sector corporations shall be obligated to ensure ethnic and racial diversity** in their human resource development, employment policies and practices.
52. In accordance with Chapter Four, Article 41 of the Constitution, on labour relations, **the private sector shall be obligated to treat all employees fairly, to provide equality of opportunity**

- in advancement at work**, and to provide a work environment in which employees are not penalised or harassed on account of their ethnicity or race.
53. In accordance with Chapter Four, Article 41 of the Constitution on labour relations, and in accordance with Section 4 of the NCI Act No 12 of 2008 on ethnic discrimination, **corporations shall not practice ethnic and racial discrimination**, and medium and large corporations shall be obligated to provide ethnic and racial diversity reports to relevant government authorities. (Small, family-based enterprises shall be exempt from providing ethnic and racial diversity reports)
 54. In accordance with Section 25 (1) of the NCI Act No 12 of 2008, on the object and purpose for which NCIC is established, and in accordance with Section 25(2) 0, of the NCI Act No 12 of 2008 on the monitoring functions of NCIC, all medium and large corporations shall **develop ethnic and race relations policies that are specific to each corporation** and based on this policy.
 55. In accordance with Chapter Four, Article 34 (4) on State-owned media, and Chapter Four, Article 35 of the Constitution on access to information, the national government shall provide adequate funding for public media that **inform and educate the public on matters that promote cohesion, integration and peaceful coexistence** and that may not be of interest to profit driven private media.
 56. In accordance with the Preamble to the Constitution on diversity, and in accordance with Section 25 (1) of the NCI Act No 12 of 2008 on the object and purpose for which NCIC is established, **all media shall be obligated to show respect for our national ethnic and racial diversity** and to promote national cohesion and integration through inclusive hiring processes, sensitivity in programming, giving respect to ethnic and racial differences and ensuring that there is no negative stereotyping of communities.
 57. In accordance with Chapter Four, Article 34 (1) of the Constitution on the limits to freedom of the media, and in accordance with Section 25 (1) of the NCI Act No 12 of 2008, on the object and purpose for which NCIC is established, all **media shall develop**

and implement appropriate editorial policies that promote positive ethnic and race relations and discourage negative ethnic and racial stereotyping.

58. In accordance with Chapter Four, Article 41 of the Constitution on labour relations, and in accordance with Section 4 of the NCI Act No 12 of 2008 on ethnic discrimination, **media houses shall not practice ethnic and racial discrimination**, and shall be obligated to provide ethnic and racial diversity reports to relevant government authorities.
59. In accordance to Chapter Four, Article 34 of the Constitution on freedom of the media, all **media shall subscribe to the principles of responsible journalism and the code of ethics** as stipulated by the Media Council of Kenya and other organs; and all media companies shall promote programming that is respectful of our ethnic and racial diversity.
60. In accordance with the Preamble to the Constitution on diversity, and in accordance with Section 25 (1) of the NCI Act No 12 of 2008 on the object and purpose for which NCIC is established, **advertising companies shall not rely on mere negative ethnic and racial stereotypes** as ways of promoting or selling products and services.
61. In accordance with Chapter Four, Article 34 (1) of the Constitution on the limits to freedom of the media, and in accordance with Section 25 (1) of the NCI Act No 12 of 2008 on the object and purpose for which NCIC is established, **media companies shall exercise their rights to freedom of speech responsibly** without practicing hate speech.
62. In accordance with Section 25 (1) of the NCI Act No 12 of 2008 on the object and purpose for which NCIC is established, all **media houses shall develop and implement ethnic and race relations policies** that are specific to each media house and based on this policy.
63. In accordance with Chapter Four, Article 32 of the Constitution on freedom of conscience, religion, belief and opinion, and in accordance with Section 25 (1) of the NCI Act No 12 of 2008 on the object and purpose for which NCIC is established, **faith based**

organisations shall ensure that they are tolerant of ethnic and racial diversity. And Believers shall not use statements that demean other religions.

64. In accordance with the Preamble to the Constitution on diversity, and in accordance with Section 25 (1) of the NCI Act No 12 of 2008 on the object and purpose for which NCIC is established, **faith based organisations including Christian, Muslim, Hindu and others shall set up mechanisms and platforms for interdenominational and inter-faith dialogues** in order to increase mutual understanding, reduce mistrust, lower anxieties and mitigate conflicts.
65. In accordance with the Preamble of the Constitution on diversity, **civil society organisations shall be obligated to ensure ethnic and racial diversity** in their human resource development, employment policies and practices.
66. In accordance with Chapter Four, Article 41 of the Constitution, on labour relations, **civil society organisations shall be obligated to treat all employees fairly**, to provide equality of opportunity in advancement at work, and to provide a work environment in which employees are not penalised or harassed on account of their ethnicity or race.
67. In accordance with Chapter Four, Article 41 of the Constitution on labour relations, and in accordance with Section 4 of the NCI Act No 12 of 2008 on ethnic discrimination, **civil society organisations shall not practice ethnic and racial discrimination**, and shall be obligated to provide ethnic and racial diversity reports to relevant government authorities.
68. In accordance with Section 25 (1) of the NCI Act No 12 of 2008 on the object and purpose for which NCIC is established, **all civil society organisations shall develop ethnic and race relations policies** that are specific to each organisation and based on this policy.

In the month of May 2012, NCIC bought space in all of Kenya's mainstream newspapers and published the Ethnic and Race Relations Draft Policy. Several of my colleagues and myself went on air to discuss the contents, on television and radio. The document was very

well received although the private sector's immediate reaction was to challenge the NCIC role in private entities. Luckily, Kenya Private Sector Alliance (KEPSA) had been represented in the discussions by one of its highest-ranking members, Keeli Kiilu, and he was able to diffuse the tension. *The Standard* newspaper analysed Kenya's background of especially ethnic tensions and noted in an editorial on 19th May 2012 that;

“The National Cohesion and Integration Commission is making commendable progress towards correcting such mistakes. This week, the NCIC released the Kenya Ethnic and Race Relations Policy Draft for discussion. An abridged version was published in the newspapers and the full text is available on the commission's website. It is also available, on request, from the NCIC office. The Policy is based on the new Constitution promulgated by President Kibaki in August 2010 and the National Cohesion and Integration Act of 2008. It works towards inclusion, “deliberately ensuring that people from all ethnic and racial groups are represented in employment, governance structures, planning, development initiatives, public deliberations, democratic arrangements and national educational institutions”. By having everyone involved in these areas, it will be possible to build a cohesive society. We applaud the effort made in coming up with the 68 policy statements that make up the NCIC draft. NCIC is on to something here. Our only caution is that its implementation should rise above a paint-by-numbers approach where the fixation is merely on parcelling out seats at the table with nary a thought to whether those invited bring the interests of their community or race to the table. As we have learned from our first half-century as a free nation, the person in office does not always represent those he has most in common with. Vote wisely, we say to voters. Appoint wisely, we say to those who implement the policy”.

The Kenya Kwanza Campaign

As we were discussing the Ethnic and Race relations Policy the Commission Vice Chair Mary Onyango came up with a concept she called the Kenya Kwanza Campaign to mobilise the public for peaceful elections. It had a charter, which Kenyans were expected to sign to demonstrate commitment to the ideals and principles of the Campaign.

The values of the campaign were, non-discrimination on grounds of ethnicity and religion, integrity; inclusivity; and tolerance. In signing

the charter, one committed: Not to be party to violence, intimidation and any other such practices that may breach peace and inhibit the attainment of harmonious relations between different clans, ethnic communities, races and religious groups in Kenya; Not to make or be party to any utterances intended to incite feelings of contempt, hatred, hostility, violence or discrimination against any person, group, or community on the basis of their ethnicity, race or religion; To do all within his/her powers to promote tolerance, understanding and acceptance of diversity in all aspects of national life and encourage full participation by all ethnic communities in the social, economic, cultural and political life of other communities; To promote free and constructive political debate, freedom of expression, freedom of assembly and tolerance of varied opinion, beliefs and aspirations of the Kenyan people; To participate in this campaign within the conceptual framework and spirit of the Kenya Kwanza Campaign 2012; and, To join hands as citizens to promote value driven agendas that will help build a cohesive, inclusive and peaceful new Kenya.

The People's Conference on Ethnic and Race Relations

The Kenya Kwanza Campaign 2012 initiative needed the support of the government and political parties and we agreed to launch it at the planned People's Conference in which we would present the draft Ethnic and Race Relations Policy for validation at the KICC on 12th to 13th March 2012.

I had left for Naivasha with the HD Centre team to draft the Nakuru Peace Agreement with the elders earlier in the week. We agreed with Mary, the NCIC Vice Chair that she would help me supervise the last minute preparations for the People's Conference. We had jointly agreed on a list of office holders to be invited and the invitations had gone out even before I left the office for Naivasha. On my way back from Naivasha, the Friday before the conference began on Monday, I got a call that PNU MPs had complained that ODM had taken up all the speaking slots on our People's Conference programme. I could not believe it! We had invited people by virtue of their offices, not political parties.

One of the PNU MPs told me what part of the problem was. By the time we had sent out the invitations with the conference programmes

attached, the Vice President Kalonzo Musyoka was on the same political side with PNU and so was the Minister for Justice, National Cohesion and Constitutional Affairs, Mutula Kilonzo and the Chair of the Parliamentary Committee on Equal Opportunity, Mohammed Affey. All the three belonged to the ODM-Kenya political party that was now falling out with the PNU party yet the offices they occupied were crucial to the conferences program.

Some people in PNU now did not want all the three on the programme. Raila Odinga was coming to the conference but the President was not. We had been told the President would speak at the big conference on peaceful elections (that we had mooted with SK) scheduled to be held at the end of the year.

Thus, began one of the longest nights of our lives, trying to salvage the conference from sabotage at the last minute. We made phone calls late into the night and the following two days. One of the strategies we thought of was to invite the two deputy prime ministers, Musalia Mudavadi and Uhuru Kenyatta; we began seeking them out on Saturday. On Sunday morning, the eve of our People's conference it was clear that our plan would fall through as the headline of the *Sunday Nation* of 11th March 2012, screamed, "*Raila says Uhuru and Ruto should be in jail*".

Raila Odinga had issued a statement in which he said that ICC suspects should be behind bars for crimes against humanity on the eve of our conference. Mr Ruto in turn responded to him on the following day by asking why Raila Odinga thought they should be jailed, yet he was the sole chief and principal beneficiary of the post-election violence in his negotiated position as the Prime Minister. Uhuru had also said of Raila that he should not be allowed to polarise the country. We began the "Peoples Conference" on that extremely divisive note.

As the conference began, I was filled with dread with the possibilities of what might happen politically. Eric Wainaina, a musician, sang his beautiful song *Daima Mimi mKenya* (I will always be Kenyan) at the beginning of the conference. It helped calm all of us down. The new chair of the Parliamentary Committee on Legal and Constitutional Affairs Hon. Njoroge Baiya, PNU came to support us. I drew strength from the fact that Mary Onyango our vice chair had braved chemotherapy, that very morning, borne the pain and was now in the

conference hall, looking as elegant as if she had just stepped out of a fashion store rather than a hospital. She gave me thumbs up as I began to speak. I pushed back my head and spoke confidently and passionately into the mike welcoming participants to the Peoples' Conference. Whatever happened, I had put in my best, and some more for the diversity conversations, the draft policy and the peoples conference.

Thank you Eric Wainaina. I began.

Your song held us together during the post-election violence and it continues to hold us even today.

Excellencies, distinguished guests, ladies and gentlemen, welcome to the People's Conference. The People's Conference is called the People's Conference because it is about the people of Kenya, the theme, **deconstructing our past to construct a shared future** is a culmination of regional dialogues on ethnic and racial diversity facilitated by the NCIC that sought to explore, real and perceived issues around ethnicity and race in Kenya. NCIC was created because this country was at war with itself. The People's Conference is expected to, among other things, consolidate experiences and lessons drawn from the regional forums and chart a way forward for Kenya.

The diversity regional conversations and this conference are in line with Article 25 (2) (j) of the NCI Act, 2008, to 'identify and analyse factors inhibiting the attainment of harmonious relations between ethnic communities, particularly barriers to the participation of any ethnic community in social, economic, commercial, financial, cultural and political endeavours'.

I draw your attention to the objectives of the regional conversations. These are also the objectives of the People's Conference that are to: Build on the common understanding from the regional dialogues of the gains and shortcomings towards the realisation of peaceful coexistence in Kenya; Provide an academic resource of choice on ethnicity and race issues in Kenya; Create a deeper understanding of how a collective sense of 'we-ness' can be cultivated in Kenya; Inform and influence research-based advocacy on ethnicity and race; Form a basis for attitudinal and behavioural change towards embracing diversity leading up to and after the 2012 general elections; and, Validate an Ethnic and Race Relations Policy.

The diversity conversations were one of the approaches that NCIC prioritised to build cohesion and integration on issues concerning ethnicity and race. In this approach we sought to bring together experts on race, ethnicity, constitutionalism, peace and conflict – to think together. Since June last year, NCIC traversed the Kenyan landscape, in Lodwar, Garissa, Isiolo, Nakuru, Machakos, Nyeri, Kakamega, Kisumu, Mombasa, Nairobi.

The conversations were built on the foundation of the Road to Cohesion dialogues, televised on national TV on what exactly needs to be done to construct a “Kenya with Kenyans”. Kenyans told us that ethnic and racial polarisation and political exclusion are traceable to many roots, including the mobilisation of identities built on the premise of inequality. This in turn has led to lack of cohesion and integration.

NCIC delved deeper into these issues and went on to hold diversity conversations with experts including academicians and practitioners, who are here today. They were tasked with analysing Kenyan regional issues to address conclusively the complex matters of addressing racial and ethnic diversity.

The conversations addressed the highly divisive issues of ethnicism and racism from both a historical and futuristic perspective. The conversations showed that it is possible to dialogue and promote understanding and compromise on conflicts. From this conference and from the regional diversity conversations, formal and informal communication will trickle down in a multiplier effect.

We hope Kenyans will see dialogue as a solution to our ethnic and racial conflicts and give ethnic and racial discussions weight in public discourse especially in the practical administration of our Constitution. These dialogues will contribute to building trust and permitting issue-oriented debate focussed on celebrating our diversity and political inclusion.

The new Constitution legitimises civil rights and liberties that ensure that exclusion is a violation of these guarantees.

Even if discrimination and exclusion have been dismantled legally, the questions that the diversity conversations and this conference seek to answer are; how in practice can we rid ourselves of narratives of hate, hostilities and ethnic and racial

politics? How do we ensure that all counties incorporate all ethnic groups into all aspects of representation?

From the regional diversity conversations, there was concern on how the new forty-seven counties would take shape within a unified Kenya. We were, however, confident that celebrating diversity would be the solution, and those counties where citizens share a common vision about who they are and where they are going, would sustain economic and political development.

The people also said that those counties without a common Kenyan identity would not form a cohesive and integrated society. Moreover, that the county that will progress most is not the one with the most resources but the one with a shared Kenyan identity. The counties that pay closest attention to enhancing the local social and cultural context towards cohesion and integrated societies will be in a position to capitalise on their common interests and affinities.

Dialogue on ethnicity and race is a powerful tool to celebrate diversity. In this conference, let us talk to – not at each other, let us dialogue over tea and over lunch and right here in plenary. Let us explore our identity as Kenyans and take that crucial first step in deconstructing our pasts to construct a shared future based on a national Kenyan identity. Welcome to the People's Conference.

Our chairman Dr Mzalendo then spoke, followed by the Prime Minister Raila Odinga. We got very good media coverage, with all dailies running the national conference as the main page one story.

The editorial of *The Standard* of 14th March 2012 said;

“The red flag is up as Kenya prepares for elections that would usher in the fourth president and it is all about mobilisation of tribes in the name of construction of political alliances. The warning is already out that the use of the tribal card to lock-out opponents and the fuelling of ethnic animosities and stirring of tribal loyalties would stoke flames similar to those of 2008 post-election violence from which Kenya has not healed. Fear for Kenya over the upcoming elections dominated a conference on ethnicity that opened in Nairobi. It afforded Kenyans time to reflect on a monster that has been blamed for lack of national cohesion, exclusion of the non-politically correct tribes from where the national cake is shared, skewed and openly

discriminative public appointments, as well as limitation of the 'pie' of corruption to a select few within the ruling class."

By the end of the two days, the conference had validated the ethnic and race relations' policy. The Kenya Kwanza Campaign 2012 initiative and the ethnic and race relations' policy now had the support of government. This was demonstrated by the signing of the Campaign Charter by the Prime Minister Raila Odinga, the Vice President Kalonzo Musyoka who closed the conference, Minister for Justice, National Cohesion and Constitutional Affairs Mutula Kilonzo, the Chief Justice Willy Mutunga, Cabinet Ministers and MPs who attended the Conference. We hoped that this commitment would be sustained through the forthcoming general elections.

PART VI:
HARD CHOICES: STEPS IN SEARCH
OF COHESION



Chapter 26

Ethnic audit of Kenya's civil service

The National Cohesion and Integration Commission (NCIC) may be understaffed and poorly funded, but it can make a big difference to this country by presenting us, the citizens, with the ugly truth about our Government. It must carry out an audit of the Civil Service and make public the results.

– The Standard, Editorial, 4th March 2011

One day, I chanced upon one of my fellow commissioners poring over a list of people in one of the daily newspapers, who had been shortlisted for employment in government. My colleague was trying to identify the number of people on the list who hailed from his ethnic community. The poignant message for me was the proclamation by my colleague; “as usual, there is no one from my community!” This demonstrated to me how much I took ethnicity for granted, because I am from a large ethnic community, that is very well represented, not only in the public service but in virtually all facets of Kenyan life. It would never have occurred to me to pore over newspaper shortlists for government jobs seeking to ensure that people from my ethnic community were included. It was taken for granted that they would always make it to any short list.

Through working in the mainly male dominated peace-building field, I had learnt first-hand what it meant to be excluded as a woman. I knew what it felt for decisions to be made for me, without me. I also had several conversations with men, including those who worked to support women's inclusion, none of who would entertain the reduction of their powers, although they supported bringing in more women to decision making positions. The big ethnic communities occupied the same position as the men. They supported the bringing in of more minorities into various positions, so long as their own positions were not threatened.

The NCI Act of 2008, required public institutions to earnestly strive for diversity in staff appointments. Furthermore, it required that, at no time should members of a single ethnic community occupy more than a third of employment positions in any government body.

Although everyone was aware of disproportionate representation in government, up to that time, no one had any hard numbers to go by. This seemingly innocuous incident pertaining to a list in a newspaper encouraged me to strongly support NCIC's undertaking to conduct ethnic audit of the civil service.

The need to carry out an ethnic audit had been on the to-do-list for the NCIC.²⁵⁰

MPs had specifically asked us to do so when they discussed the creation of NCIC. The exclusion of some Kenyans from the civil service had its roots, as did many other problems, in colonialism and post-colonial governments. The colonialists had approached recruitment from a racist perspective.

“Kenya’s population in 1959 was 6.4 million, of whom 60,000 plus were whites, officially categorised as ‘Europeans’ to the bewilderment of visiting Americans, and the population of Nairobi was 250,000, although it was still the largest city between Johannesburg and Cairo. Racism was institutionalised in government service, with salaries graded by ethnicity: Class A for Europeans, B for Asians, C for Arabs and D for Africans, the latter being mostly drivers, messengers and cleaners. Categories also extended to accommodation (...)”²⁵¹

For the ethnic audit on the civil service, the NCIC relied on data from the government’s Integrated Personnel and Payroll Data System (IPPDS), which had been made available to us by the Head of the Civil Service, Mr Francis Muthaura. The system housed such personnel details as name, ethnic community, and pay for all government employees. The data used for the audit were those of March 2010. We were still quite underfunded by the government and could not carry out as many projects and as promptly as we would have liked. One such casualty was the ethnic audit, the data for which had been in the hands of the NCIC for several months without action. In our meetings as the Commission, we had determined that the country needed to move forward quickly, but could not do so until the civil service data was properly analysed, problems and their probable causes identified, and

appropriate remedies designed as necessary. Eventually, I approached some funders who agreed to fund the project and provide technical expertise. The experts presented their analysis of the data that we had given them as the NCIC team.

The findings were a lot more troubling than any of us could have imagined.²⁵² For example, more than 20 out of 42 communities held less than 2% of the jobs in the Civil Service. Seven of these communities had less than 100 members in the civil service. Of the included, seven communities each had between 5% and 22% of all civil service jobs.

Eight out of 33 departments were in breach of the law because more than 33% of their staff were from one community. In retrospect, we considered the law too lenient for Kenya as seven communities out of a total of forty-two had members of each of their ethnic communities holding 30% of the civil service jobs, yet were still within the law. The Kalenjin and Kikuyu alone had a combined presence of 40% of the civil service jobs.

We knew that using a population size of a community to measure how represented it was in the civil service did not necessarily translate into arguing that the community consisted of members, all of who were employable, but it still did not explain the huge disparities between the excluded and the included. In fact, the share taken by six communities of civil service jobs exceeded their relative population size by between one and four percentage points, with five communities under represented by similar margins.

Our key concern was that the narrative that emerged from the data would be the usual – that of who was included – most likely saying the Kikuyu and Kalenjin dominated civil service jobs. This would mean that narratives such as that of the excluded would not be told. We agreed as NCIC to hire a media and communication analyst, Kwamchetsi Makokha, to help in packaging the information. After a lot of discussion, we were able to break down the statistics into several narratives that prioritised the excluded.

Narrative 1: Profile of exclusion

More than 50% of the 42 ethnic groups were marginally represented in the Civil Service – the country's largest employer. Only 20 out of

the 40 ethnic communities were statistically visible in the Civil Service. Some 23 communities had less than 1% presence in the Civil Service. Further, there were communities that were missing out or that were grossly under-represented in absolute terms. None of them had even 100 of their people in the Civil Service.

Narrative 2: Profile of inclusion

The second narrative was that of Ministries and departments that had exceeded the legal limit of more than a third of employees from one community. The staff composition in more than 10 government departments defied the law. The NCI Act, 2008, required that no single ethnic community should constitute more than one-third of the staff in any ministry or government department.

The ministries and departments with more than a third of staff from a single community included State House, the Ministries of Transport, Public Works, Tourism, Local Government, Higher Education and Nairobi Metropolitan Development.

Nine government ministries and departments were close to breaching the law. They had more than 30% but less than 33.3% of their staff from one community.

A total of 22 departments and ministries had more than 25% of their staff from one community. These were the Public Service Commission, the Cabinet Office, the Office of the Vice President and Ministry of Home Affairs, Youth Affairs and Sports, Trade, Special Programmes, Regional Development, Public Health and Sanitation, Planning and National Development, National Heritage, Medical Services, Land, Information and Communication, Justice, National Cohesion and Constitutional affairs, Housing, Forestry and Wildlife, Gender and Children, East African Cooperation, Foreign Affairs, civilians in the Department of Defence, Northern Kenya and Arid Lands, Agriculture and Education.

Eight departments and ministries had more than 20% of their staff from one community. These were the Ministries of Fisheries, Immigration and Registration of Persons, Public Service, Office of the Prime Minister, Administration Police, and the Kenya Police.

Only the Provincial Administration, which hires district officers, chiefs, assistant chiefs and support staff from all communities across the country, had 16.84% of staff from one community.

Of the twenty seven of the thirty departments or ministries, the ethnic group with the dominant share of positions in twenty seven of the thirty departments was the Kikuyu; of the remaining three, the Kalenjin had the dominant share in two of the departments (Kenya Police and the Kenya Prisons) and the Luo had the dominant share in one Ministry, the new Office of the Prime Minister.

Narrative 3: Profile of dominance

The third narrative was that there was dominance, over representation and under-representation in the Civil Service. The racial and ethnic inequality in the composition of the Civil Service was so serious; it amounted to domination of a few communities over the rest.

Only seven ethnic communities had representation above 5% in the Civil Service. The Kikuyu, Kalenjin, Luhya, Kamba, Luo, Kisii and Meru had a representation of above 5% in the Civil Service. The seven communities had a combined population share of 76.7% against a Civil Service presence of 81.7%, a significant 5 percentage points. All the other communities' representation was below 5%. Five of the seven ethnic communities – the Kikuyu, Kalenjin, Luhya, Kamba and Luo – occupied nearly 70% of Civil Service positions. Although the five were the most populous, their share of positions in the Civil Service was at variance with their representation in the population at large.

Those from the majority ethnic communities have often argued that the reason they have more people in Civil Service than others is because of their larger numbers in the population. For fair measure, they also say that they have the majority in the police and prison cells, mortuaries and graveyards.

Although most Kenyans accept that the largest communities will have the most people (in absolute terms) in the Civil Service, the problem is to do with the disproportionate share of positions occupied in the civil service relative to their proportion in the population and not in the absolute number of positions.

In other words, the issue is the wide variance between a community's share of population and share of civil service posts. From the audit, the Kikuyu and the Kalenjin were the two ethnic communities with the most disproportionate share of Civil Service posts compared to their population. Their proportion in the Civil Service exceeded the size of their share in the national population.

There were communities whose presence in the Civil Service was lower than their share of the population. These were the Luo, Luhya, Somali, Kamba, Turkana and Maasai.

There were many explanations for these variances, including disparities in access to education, proximity to the location of government offices, as well as willingness to seek employment in the public service. The patterns of staffing suggested that power and leadership influenced the ethnic composition of the public service.

Looking at the public service as then constituted and the domination by the two groups, without any conscientious and sustained effort on the part of central government to address the structural imbalance in hiring, it would not be unreasonable for members of the other communities to entertain fears of continued domination.

Narrative 4: Patronage in hiring (pre-2008 ministries)

The Kikuyu constituted the largest and most dominant ethnic group in all ministries and departments, except in the Prisons Department, the Office of the Prime Minister and the Kenya Police. The Kalenjin were the second largest group in the Civil Service. They were also the most dominant group in the Prisons Department, and the Police Force. These two ethnic communities alone made up close to 40% of the entire Civil Service. Their numbers in the Civil Service suggested a direct relationship with the tenure of the presidency, in that since independence in 1963 and up to 2013, the three Presidents that Kenya have had, had always been a Kikuyu or Kalenjin.

Over the years, there had been various indications that incumbents had routinely hired a disproportionate number of new employees from the incumbents' ethnic community. This patronage in hiring had resulted in a perpetuation of the dominance of the ethnic communities

of the majority incumbents. One good example of patronage in hiring was that of the Police Department.

Narrative 5: Patronage in hiring (Post-2008 ministries)

It was also curious that in the newly constituted ministries, the patterns of ethnic patronage were still evident. The new ministries were not doing anything differently. The Ministry of Nairobi Metropolitan Development had 33% staff from one community (Kikuyu), while the Ministry of Northern Kenya had 26.27% of one community (Kikuyu). The Office of the Prime Minister, headed by the Prime Minister Raila Odinga, had the majority 21.87% of one community (Luo). This was a clear indicator that what we had concluded earlier that numbers in the Civil Service suggested a direct relationship with the tenure of the presidency was true. The Prime Minister and the President were the Principals of the Coalition Government and in about four years, the office of the Prime Minister had a clear Luo majority, his ethnic community.

Narrative 6: Exclusion at the lowest levels

Lack of access to education had been cited as undermining equitable hiring for the Civil Service across communities. However, we established that the dominant two ethnic communities are not necessarily the most literate. Furthermore, there are some ethnic communities which are more or as equally as literate as the dominant two.

The skewed recruitment into the Civil Service cuts across all job groups, including those that did not require high educational qualifications. In the lowest job groups – A, B, C and D – the same seven major communities accounted for over 80% of Civil Service jobs. These job groups consist of people working as cleaners, tea makers and messengers. Again, the number of those hired from each community was at variance with their representation in the population at large. The communities that were statistically insignificant remained outside this civil service group.

Table 26.1: Literacy rate by ethnic community

Literacy rate by ethnic community	
Ethnic community	Literacy rate (%)
Kisii	83.4
Kikuyu	83.0
Embu	82.4
Luo	80.8
Kamba	79.4
Luhya	71.9
Kalenjin	71.6
Meru	68.2
Mijikenda	55.0
Maasai	31.8
Somali	20.9

Conclusions and recommendations

Table 1 below shows the population size of ethnic groups and proportion in the civil service in 2010.

The 2010 Constitution called for ethnic diversity in the Civil Service. Article 232 (1) (h) required ‘representation of Kenya’s diverse communities’ as one of the **values and principles** of the public service.

Article 232 (1) (i) (ii) required ‘affording adequate and equal opportunities for appointment, training, advancement, at all levels of the public service of ... the members of all ethnic groups’.

Ethnic Group	Population (census 2009)	Population %	Number in the civil service	Percentage in the civil service		Ethnic Group	Population (census 2009)	Population %	Number in the civil service	Percentage in the civil service
Kikuyu	6,622,576	17.7%	47,146	22.3%		Mbeere	168,155	0.4%	1,062	0.5%
Kalenjin	4,967,328	13.3%	35,282	16.7%		Swahili	110,614	0.3%	701	0.3%
Luhya	5,338,666	14.2%	23,863	11.3%		Gabra	89,515	0.2%	648	0.3%
Kamba	3,893,157	10.4%	20,490	9.7%		Basuba	139,271	0.4%	462	0.2%
Luo	4,044,440	10.8%	19,025	9.0%		Other Kenyan		0.0%	368	0.2%
Kisi	2,205,669	5.9%	14,287	6.8%		Tharaka	175,905	0.5%	365	0.2%
Meru	1,658,108	4.4%	12,517	5.9%		Orma	66,275	0.2%	349	0.2%
Mijikenda	1,960,574	5.2%	7,924	3.8%		Rendille	60,437	0.2%	301	0.1%
Kenya Somali	2,385,572	6.4%	5,619	2.7%		Burji	23,735	0.1%	288	0.1%

Embu	324,092	0.9%	4,118	2.0%		Taveta	20,828	0.1%	237	0.1%
Maasai	841,622	2.2%	3,090	1.5%		Njemps	5,228	0.0%	220	0.1%
Taita	273,519	0.7%	3,074	1.5%		Kenya Arab	40,760	0.1%	90	0.0%
Borana	161,399	0.4%	2,587	1.2%		Kenyan Asian	46,782	0.1%	74	0.0%
Turkana	988,592	2.6%	2,112	1.0%		Unknown		0.0%	21	0.0%
Teso	338,833	0.9%	2,029	1.0%		Gosha	21,864	0.1%	19	0.0%
Samburu	237,179	0.6%	1,457	0.7%		Dassanech-Shangil	12,530	0.0%	10	0.0%
Kuria	260,401	0.7%	1,207	0.6%		Kenyan European	5,166	0.0%	2	0.0%
						Unknown		0.0%	0	0.0%
						Total	37,488,792	100.0%	211,044	100%

Ranking of ministries by size of employment

We concluded that recruitment policy based purely on merit or competition may not give Kenyans a public service that represents the face of the country. Disparities in education infrastructure and imbalances in development generally meant that some communities are more likely to produce highly skilled people than others. It is these disparities in regional development and basic services that the country should have addressed in the past 50 years of independence.

The disparities noted pointed to the country's failure to identify ethnic inequalities as a challenge to national cohesion. There was a need to develop and implement policies that could reduce these inequalities. As a minimum we recommended that the following measures should be considered for adoption;

Administrative action to ensure that all ministries and departments remain within the limit of one-third of all appointments being held by members of one community. Such administrative action may include a temporary freeze on hiring of over-represented ethnic groups and an increase in the hiring of under-represented communities until such time that civil service representation is close to population representation. A new criterion for representation, which recognises the need to urgently include the under-represented groups, be negotiated and enacted into law. Affirmative action should be adopted for communities that are missing from the Civil Service. The current 33% ceiling is too high. A figure between 15% and 20% would be closer to population realities. Regular reviews of how each ministry and department is addressing the problem of ethnic inequality. Performance contracts of senior management should include entrenching diversity as a major indicator of performance. Efforts to prevent a certain constellation of ministries, based on their strategic importance or resource base, from being staffed by one ethnic community beyond a certain limit. Accelerated affirmative action to build the human capital stock in areas historically marginalised by establishing schools, improving communication and infrastructure and offering training. A deliberate head-hunting policy similar to what the government does with Kenyans in international organisations that are occasionally recruited to the Civil Service. Because of long periods of marginalisation, some communities have internalised logic of self-

exclusion, even when they are qualified. A head-hunting policy for every employing opportunity should be adopted.

We also pointed out that the Constitution had the potential to address some of these problems: For appointments requiring parliamentary approval, a memorandum stating how these new appointments have affected the ethnic composition in the Civil Service should accompany the submission of names. This should be one of the considerations Parliament should make in rejecting or accepting the nominee. The relevant law should require that once every year, the Head of Civil Service should make a report on ethnic composition in the Civil Service (or whenever a wave of employment occurs, this report should be made). Devolution should be turned into a space for integration. Incentives should be created for county governments and private sector to embrace diversity by making it a criterion for qualifying for the Equalisation Fund or Government contracts. There is still need to reduce pressure on the Civil Service as one of the largest employers by creating jobs in the private sector. As those in Government make efforts to embrace diversity, so too must citizens desist from pressurising people from their communities – be they politicians or officials – to secure them jobs in the public sector.

In the near future, NCIC should undertake to provide further analysis of diversity in other public sector positions such as parastatals and universities.

Implementing the ethnic audit

With the figures compiled, we sought audience with the Head of Civil service Francis Muthaura to present the report on the ethnic audit for action. Mr Muthaura asked us to go to the Kenya Institute of Administration (KIA), now Kenya School of Government (KSG), where a meeting of all Permanent Secretaries was taking place and present the data and map out a course of action together. At the meeting, the chairman Dr Mzalendo, Commissioner Fatuma Mohammed and myself presented the report on power point, in turns. The reaction was of course shock among some of the Permanent Secretaries at the levels of ethnic exclusion in the civil service.

Other Permanent Secretaries, particularly those who had worked in the Ministry of Planning already had access to the statistics and therefore did not look surprised. We were able to point out examples of patronage-based hiring practices at different levels including the level of the Presidency, Ministers and Permanent Secretaries. We pointed out that an income from a civil service job is important in sustaining families and therefore, the importance of a Civil Service job should not be underestimated.

Whole populations had been excluded from driving policy on Kenyan affairs by virtue of being kept out of employment in the civil service. Kenyan families were being employed in the same ministry or department with a father bringing along a son to be hired, a mother a niece and so on in what Kwamchetsi had called “an informal apartheid system that could perpetuate an inter-generational transmission of inequality”.

The Permanent Secretaries agreed to help the NCIC work on affirmative action for the excluded and the redistribution of staff in their ministries to ensure ethnic balance. They also agreed that they would assist NCIC in strengthening the institutions that check the effects of patronage. This patronage, we feared, extended beyond employment to the award of tenders and government contracts to people from the ethnic communities that the employees came from.

We advised the Permanent Secretaries that we would formally write to the Head of Civil Service with a copy to the President and ask them to take administrative action in those departments and ministries that had more than a third of their staff from one community. NCIC also wrote to Parliament to exercise its powers of oversight to ensure that administrative action was taken through the Parliamentary Committee on Equal Opportunity headed by Mohammed Affey. We had engaged this parliamentary committee extensively in our work. We had discussed with Mr Affey the need for MPs to re-examine the law with a view of ensuring diversity within the public service.

The 2010 Constitution had made it easy for Parliament to set laws to support ethnic diversity especially distribution of the Equalisation Fund and other allocations to the county governments. The Constitution provides for diversity in Public Service in terms of gender, ethnicity

and ability. Even as the NCIC team discussed the findings, there was concern that the mistakes made at the national level could be devolved to the county level.

After the meeting with the Permanent Secretaries, NCIC met heads of the media houses to discuss the results of the audit. The discussion was more focused on the communities “excluded” than on those “included.”

To that end, I organised for meetings with the media chiefs and together with the NCIC Chairman we met with the following: Wachira Waruru, Group Managing Director at Royal Media Services that controlled Kenya’s television station with the highest viewership, Citizen Television, Radio Citizen, broadcasting in Kiswahili, Hot 96 in English, vernacular radio stations such as Chamege FM (in Kalenjin), Inooro FM (in Kikuyu), Ramogi FM (in Luo), Egesa FM (in Gusii), Mulembe FM (in Luhya), Musyi FM (in Kamba) Muuga FM (in Meru) and Bahari FM (in Kiswahili but focused on the Coast). Mutuma Mathiu, Managing Editor of the Nation Media Group that controlled the country’s widest circulating newspapers, the *Sunday Nation*, *Saturday Nation*, *Daily Nation*, *The East African*, *Business Daily* and the Kiswahili newspaper *Taifa Leo*. It also controlled NTV and radio stations Easy FM and Q FM. John Bundotich, Group Managing Editor of *The Standard Group* that controlled *The Standard* newspaper, the Kenya Television Network (KTN) and Radio Maisha. Paul Ilado, Group Political Editor at Radio Africa Group Limited, that controlled *The Star* newspaper, Kiss FM, Classic FM, Radio Jambo, XFM and East FM.

Public reactions to the ethnic audit were quick once the results were published in the media. The office of the President confirmed the position of NCIC in regards to ethnic composition of the Kikuyu being in the majority in their office but explained that they did not directly hire their own staff; the Public Service Commission (PSC) did so. They however said they would rectify by ensuring ethnic balance and wrote to the PSC immediately.

The Prime Minister issued a statement indicating that the figures NCIC had on his office were exaggerated, but the figures he put out as true were worse, showing that there were more people from his ethnic community, the Luo than we had even pointed out. `

The Nairobi Metropolitan Development Minister accepted that the Ministry had breached the NCI law. However, the minister blundered by asserting that PSC focused more on meritocracy other than regional representation which implied that those who were not in the top five did not merit the positions.²⁵³

The State Law office committed to review its policies to abide by the ethnic audit. The Solicitor-General, Wanjuki Muchemi said the department was already implementing a “face of Kenya” policy in which all ethnic communities would be considered for employment.²⁵⁴

The Assistant Minister, Ministry of Higher Education, Science and Technology Kilemi Mwiria responded cryptically to the media reports:

“The report on ethnic composition of our civil service has clarified what has been a subject of great speculation. It demystifies the lie peddled by some politicians in 2007 isolating the Kikuyu as the only community over-represented in government employment. We now know of the “big five” even though the Kikuyu take up a disproportionate share of the top civil service jobs. We also know that the Kalenjin community is doing much better than the non-Kikuyu were made to believe; a lie that caused much political tension in 2007. They are second only to the Kikuyu community and actually take the lion’s share in the police force. (...) It is disgraceful that as many as 20 Kenyan ethnic communities appear nowhere in the civil service, even for the most menial of positions. No wonder some of their leaders talk of not being part of Kenya. For Asians, Europeans and Arabs, one could understand as they rarely seek civil service jobs and in any case dominate directorships and senior positions in the private sector. For the most under-represented communities, we need to implement affirmative action in employment and education in the short term.”²⁵⁵

Former MP for Mandera Central and later Senator Billow Kerrow responded thus:

“The first ever ethnic audit of the civil service conducted by the NCIC only confirmed what we always knew – that resources in this country are shared out on political patronage. The more political power you have, the more resources you shall have. Consequently the two communities who had presidency occupy 40% of all civil service jobs. Three other communities that have produced vice presidents have 70% of all the jobs.

Indeed, according to NCIC, their share significantly exceeds their population proportion and even their political representation in Parliament. When you extrapolate these findings into other areas of governance, it is apparent that the same communities lead in relative economic wealth and education. Over 20 tribes hold less than 1% of these public sector jobs. This explains why we see the Pokot, Turkana, Mijikenda, Somali and other minorities on TV in appalling poverty and destitution. Even in the Ministry of Arid and Semi-Arid lands created for Northern Kenya, ethnic communities in that region have only a tiny proportion of the jobs.

Now we can appreciate why our leaders fight tooth and nail to get to State House. For those who have experienced it, the end justifies the means. The holders of these lofty offices lead in the ethnicisation of the public service. Over 45% of employees in State House are from the President's ethnic community, while his kinsmen hold almost 22% of jobs at the Prime Minister's office. It is not accidental, nor is it about merit – just plain ethnic disposition”.²⁵⁶

The Standard newspaper editorial of 7th April 2011 termed the NCIC report “a massive and brave step, given the prevailing background against which it was compiled, and the mandate of the organisation.”

Parliament's Equal Opportunity Committee chaired by Mr Mohammed Affey met to discuss the NCIC report. In the following months, the committee summoned all the Ministers and Permanent Secretaries of the ministries that had flouted the NCI Act, 2008, by having more than a third of staff coming from one single ethnic community.²⁵⁷

On Tuesday, 26th April 2011, the Minister for Nairobi Metropolitan Development, Mr Robinson Githae, and his PS Phillip Sika appeared before the committee to explain why his ministry had flouted the law.

In subsequent months, several more appeared before the committee. They included Minister for Public works Chris Obure who led a team consisting of his PS Prof John Lonyangapuo, several engineers, architects and surveyors; Deputy Prime Minister and Minister for Local Development, Mr Musalia Mudavadi, and his PS Prof Karega Mutahi, Minister for Transport Mr Amos Kimunya and his PS Dr Cyrus Njiru, and Minister for Higher Education Prof Helen Sambili, the PS Prof Crispus Kiamba and Assistant Minister Mr Asman Kamama. The ministries key argument was that all the staff in higher job groups were recruited by the

Public Service Commission (PSC) and only those in lower job groups were recruited by the Ministries. The problem of over-staffing by one ethnic community was therefore about who applied and who shortlisted.

On 21st June 2011, Mohammed Affey's committee met with the PSC chairperson Titus Gateere, the Secretary, Bernadette Nzioki, a senior official, Florence Wachira and their recruitment and legal officers. The PSC said job vacancies were advertised in the print media and on its two websites and were open to all qualified citizens. The committee and the PSC discussed modalities of implementing the recommendations of the NCIC ethnic audit and undertook to review their implementation within three months.

In the meantime, the Affey committee decided to conduct an ethnic audit of Parliament's staff and subsequently held a meeting with their own Parliamentary Service Commission (PSC) represented by Patrick Gichohi, the Clerk of the National Assembly, and Peter Omolo, the Senior Deputy Clerk. From documents presented by the Clerk, they were able to establish that Kwale County had not been represented in the commission in all existing cadres. Between 2008 and 2011, 10 out of the 47 counties did not have any of their members working in Parliament. Part of the reason why some communities were not represented was lack of access to information on the vacancies that were published in the media.

The Affey committee submitted the following findings to Parliament. That; all information received from the Ministries and Departments showed a huge ethnic imbalance in employment; there was a consistent pattern of exclusion of some communities in all the ministries; there was need for affirmative action to ensure redistribution of staff above the legal threshold to other Ministries; the PSC had focused more on meritocracy ignoring gender, ethnic and regional balance and thus failed to realise diversity as required by law.

The Committee recommended that all Ministries must adhere to the law that provided that no single ethnic community should constitute more than one-third of the staff. All ministries were asked to address ethnic inequalities, while the Directorate of Personnel Management (DPM) was asked to redeploy employees across Ministries to ensure ethnic balance. The committee also asked PSC to put in place strategies to ensure that

employment, redeployments and promotions were balanced. The PSC was instructed to develop a scheme of service for employees within the next six months. The Commission was also asked to prepare a database of all its employees who had attended training courses and those who had not.

* * *

On 7th March 2012, NCIC released a report of ethnic audit of the universities compiled by Dr Julius Jwan, the NCIC head of programmes titled “*Ethnic Diversity of Public Universities in Kenya*”. We did not call a press conference, but instead, went to Parliament and handed over the report to the Parliamentary Committee on Equal Opportunity chaired by Mohammed Affey. The conclusions of the audit were that six ethnic communities controlled 81% of all the jobs at the higher learning institutions. These were the Kikuyu, Luhya, Kalenjin, Luo, Kamba and Kisii. There was notable lack of representation of some ethnic groups such as the Tharaka, Gabra, Orma, Burji, Gosha, Dassanech and Njemps among other minorities.

On 15th April 2012, Higher Education, Science and Technology Minister Margaret Kamar hosted a meeting to discuss the NCIC report on “*Ethnic Diversity of Public Universities in Kenya*”, focusing on ethnic distribution in public universities. She invited her assistant ministers, the university chancellors, vice chancellors, principals of colleges and academics to – as she put it – not just critic the report but, “look ourselves in the eye and accept that whatever flaws the report may have had, universities had failed to adhere to the law on inclusion and integration.”

Prof Kamar showed leadership considering that some universities had bought space in newspapers to disparage the NCIC report. She invited NCIC and the Chair of the Parliamentary Committee on Equal Opportunity, Mohammed Affey to witness as she led the university managers in passing resolutions that included embarking on, within three years, a major reshuffle of members of university councils and top governing bodies of the institutions to reflect ethnic balance.

Prof Kamar also led them in accepting to undertake a centralised advertisement for all available vacancies for university top management and engagement of an employment agency to recruit successful

applicants. She committed to leading a process of developing policy that would allow a centralised advertisement for available vacancies of chief executives and their deputies. Mr Affey assured the professors that ethnic discrimination would only be eliminated in higher education institutions if they worked with NCIC and the Parliamentary Committee on Equal Opportunity.

* * *

NCIC would be vindicated years later, when our terms as commissioners had ended and we had left office. On 21st February 2014, the PSC, which had taken over the functions of DPM as per the 2010 Constitution, headed by Dr Margaret Kobia released a report showing efforts towards identifying and bridging staffing gaps between ethnic communities in the public service.²⁵⁸

“We are putting in place measures to ensure the future does not mirror today; the 30% threshold will not be achieved in a day, it is a gradual process and the coming years will definitely create a change (...) PSC has put in place strategies to ensure those being employed are representative of all tribes. We will be doing this to factor in the representation in terms of population.”

The report's key findings were; Three most populous communities in the country held half the civil service jobs. The Kikuyu, Kalenjin and Luhya. There were 236,231 employees on the public payroll as at 30th June 2013, and the three ethnic communities accounted for 115,633 or 49% of the work force. The Kikuyu community had the highest number of employees at 52,787 accounting for 22.3% of the total workforce. The Kalenjin were second with 36,069 (15.3%) and the Luhya community third with 26,777 employees, representing 11.3%. The Kamba were fourth with 22,961 employees or 9.7%. The Luo community had 21,472 officers, Kisii with 16,407 officers, Meru with 14,057, Mijikenda 7,273 officers and Embu with 4,469 officers. Among the minorities, the Hawiyah ethnic group had the lowest representation in the service with only one officer working as a technician. The South Asian community was represented by 104 officers in government service, while the Sakuye, Murulle and El Molo had 76, 72 and 27 officers respectively, giving them the lowest representation. Kenya's smallest ethnic community, the El Molo community, feared to be fast becoming extinct, had most of

its workforce in the lower support staff category with 20 officers. The highest placed El Molo was in the technical staff category at Job Group K. There were only two Kenyan European officers in the civil service while the Dassanech-Shangil community had 11 officers, all male. The Gosha community had 19 officers in the public service.

In December 2014, PSC published a follow up report that highlighted the Kikuyu, Kalenjin, Luhya and Kamba communities as being not just the majority but also over-represented in the Civil Service. They controlled 58% of the workforce in government ministries, departments and agencies. This was a vast improvement; in the space of less than one year, the ethnic dominance had been reduced from 58.7% to 58%. A survey of 168 agencies with a workforce of 94,286 had informed the findings.

In 2015, a new law, the Public Service (Values and Principles) Act, 2015, came into force. It sought to create a balance on public jobs in favour of minorities in fulfilment of the Constitutional requirement that required equality in employment. The law was clear that ethnic balancing was a priority in recruitment in the civil service. “The public service may appoint or promote public officers without undue reliance on fair competition or merit if an ethnic group is disproportionately represented in the public service or in a public institution”. Reading through the Public Service Act, 2015, I realised that *The Standard* newspaper was right. We as NCIC had taken a very courageous step in publishing Kenya’s first ethnic audit of the Civil Service and had directly contributed to a legacy.

Chapter 27

Partnership with Education Ministry and KICD

The Commission shall plan, supervise, co-ordinate and promote educational and training programmes to create public awareness, support and advancement of peace and harmony among ethnic communities and racial groups.

– National Cohesion and Integration Act No. 12 of 2008, 25 (2) (d)

In the initial months of our term in office, as Commissioner in charge of convening the education team of Commissioners, I drafted a letter for the Chairman's signature to the Ministry of Education, seeking a meeting with the PS and the Minister to discuss ways and means of integrating national cohesion in the education system.

However, we did not get an immediate response, which was frustrating.

It was crucial to engage the youth at an early age, combat the prejudices planted in them by society and their parents before they took root and translated into discrimination or worse, violence. The people wielding machetes in Kenya's 2007-2008 post-election violence whose footage was broadcast to the world were young. If we caught Kenyan youth early, we could undo the rationalisation of prejudices and arm them with the understanding they needed to replace ethnic prejudice with positive attitudes towards people of all ethnicities and races.

I had researched extensively and knew that young people learn through observation and imitation and are likely to start perpetuating discriminatory practice long before they learn the word 'discrimination'. By the time their curriculum includes the term 'discrimination' they are likely to have internalised the underlying prejudice. Prejudice is formed in late childhood and adolescence and sustained from one generation to another through social usage. When it favours individual and group

self-interest, it is easy to rationalise.” Discriminatory practices could be countered by changing rules of behaviour provided it was done at an early age.

My frustrations ended with the appointment of a new PS, Prof James Ole Kiyiapi in 2011. I drafted another letter asking for the meeting. I also talked to Prof Kimani Njogu, of the friends of NCIC, himself an educator, about my frustration with securing a meeting with the ministry officials.

Prof Njogu introduced me to Sirengo Khaemba, a man whom he described as efficient and action-oriented. Khaemba was in charge of the Kenya National Drama and Music Festival (KNDMF). We met and discussed the things we could do together. He advised that NCIC initially focuses on co-curricular activities, such as sponsoring themes in drama, music and sports on social cohesion. We began working with Khaemba.

Meanwhile, Prof Kiyiapi responded favourably and convened a meeting attended by all directors in the Ministry and all NCIC commissioners and staff. Our key message was that the Ministry of Education was a critical stakeholder in promoting national cohesion and integration. This involved, reviewing the quota system of admission and integration of national values in the school curriculum; incorporating messages of integration and cohesion issues by sponsoring school debates, essay competitions, drama and music festivals and conducting an ethnic audit within public and government institutions.

It was resolved that the Ministry and NCIC work on joint programmes to anchor national cohesion and integration in on-going efforts on peace education.

Writing of the period after independence, Kenneth Matiba, former cabinet minister in the Jomo Kenyatta and Daniel Moi government says;

“As Permanent Secretary in the Ministry of Education in an independent Kenya, there were issues I felt strongly that the Ministry should systematically find ways and means of resolving. One of those was the role the educational system could play in breaking down tribalism. I felt then and still feel that tribalism could be minimised if there were more opportunities for various tribal groups to integrate at the right age.

My idea was that after schools with boarding facilities had done their selections and filled their quotas, the lists of selected students from all over the country would be brought together and reshuffled into new lists comprising students from different ethnic backgrounds, to enable them to have a chance to study together and get to appreciate each other's culture.

Alliance and Makerere College had given me the inspiration for this. The students in those institutions were broad-minded and did not choose their associates because of their tribal origin. Unfortunately, there were quite a number of influential leaders who were not particularly enthusiastic about the idea. In any case I was transferred to the Ministry of Home Affairs in December 1964 before I could implement many of the ideas I had on education in Kenya.”²⁵⁹

I was pleasantly surprised when the education team agreed and conceded that one of the places we had gone wrong as a country, was on the introduction of the policy on the quota system in admission to secondary schools, and that the classification of schools as national, provincial or district, was wrong.

The quota policy was introduced in the mid-1980s and stipulated that provincial schools would admit 85% of students from their regions. This denied students a chance to move from their localities to other regions, interact with those from other communities and through that acquire a sense of nationalism.

Broadly, the meeting agreed to review the quota system, establish a partnership to strengthen infusion of cohesion and integration in the national education policy as well as primary and secondary school curriculums. The quota system would be further diluted, the Prof Kiyiapi said by creating more national schools. National schools would also be expanded and standardised in every county to bring students of all ethnic communities together.

NCIC and the Ministry of Education were to develop a broad-based criterion for tracking performance. This criterion would include among other things, tracking academic accomplishment across all ethnic communities of Kenya. It would also ensure curriculum relevance and coverage by examining, for example, whether the history or geography of Kenya taught reflected all ethnic communities. That way, NCIC and the Ministry could keep track of efforts towards achieving national

cohesion and integration in the education sector. We had received several complaints at NCIC from across all ethnic communities that a lot of oral history had not been captured in school textbooks.

NCIC also asked the Ministry to review education laws to reform the education systems.

Prior to the meeting, the Ministry of Education had introduced a new aspect to the quota system. This new system related to Form One admissions and categorisation of secondary schools into private and public secondary schools. This new system, we argued, as NCIC would entrench disparities in educational achievements and expressed dissatisfaction with it.

NCIC further raised the issue of discrimination in relation to the limited chances to compete for entry into national universities by students from district schools to pursue high demand academic programmes such as medicine, law and commerce. This discrimination was further exacerbated by the selection of Form Four candidates by the Joint Admissions Board (JAB) that raised serious inequalities. Students from marginalised communities and district schools were disadvantaged in the selection process.

NCIC also wanted to train teachers on cohesion and integration. The PS reported that the Ministry had taken steps to ensure ethnic balance, especially in top positions. The PS advised the NCIC to put together proposals on education reform and present to a taskforce that had been set up to align the sector to the 2010 Constitution, chaired by Prof Douglas Odhiambo.

Following the meeting, Prof Kiyiapi opened up several partnership opportunities with NCIC. I led the NCIC technical team consisting of Linda Ochiel, Munini Nzwili, and Liban Guyo to a meeting that he chaired and that was attended by all the Ministry's directors.

In this meeting, we agreed on the issues to work on easing out the quota system, reviewing the school curriculum, training teachers and sponsoring an essay competition and the drama and music festivals. We drew up a timeline for each activity and Prof Kiyiapi assigned a member of staff from his Ministry for each. He also gave us an officer, Mary Kang'ethe, who was in charge of peace education, to work with. I told him that I had approached Sirengo Khaemba too. Prof Kiyiapi

said he would assign him as the point person on anything to do with NCIC, as Mary's key role would be to get NCIC on board in the process of drafting a peace policy. Everything was coming together.

The Ministry officials highlighted some of the challenges they had with schools, among them a large number of student riots. The directors said that they had gone round the country and the students had told them to their faces that they had seen adults turning against each other in 2008, including their own parents, and had learnt that violence was the way to resolve disputes. Students, therefore did what they had seen the adults do, burning up dormitories and classrooms and hating those not from their ethnic community. The students told the taskforce formed to establish the causes behind the riots in the schools that "they had no role models and therefore could not negotiate anything with the Ministry officials".

Unicef and the Ministry of Education had carried out a study that concluded that schools with enhanced students' participation in governance exhibited better discipline. This prompted the creation of national conferences for students that took place in 2009. The conference created the space for teachers, students, parents and other key stakeholders in education to discuss student involvement in decision-making and policy formulation. The conference resolved to adopt and fully implement a student's council structure in all secondary schools in Kenya. This resulted in the Kenya Secondary School Heads Association (KSSHA), Unicef and the Ministry of Education rolling out a Student Leadership Programme, as well as institutionalising the conference as an annual event. I asked the Ministry to allow NCIC to co-sponsor the 2012 conference, and the requested was granted.

Prof Kiyiapi concluded that he was now getting fairly confident that we had a clear cohesion and integration agenda for the young people within the system of schools and universities because NCIC could reach them through him. "Now that we are agreed on how to work together, tax your minds on what to do with the children out of school, those who could not go beyond Standard Eight or Form Four; those with no hopes for employment. They are the ones who will go into crime, and get easily recruited into ethnic militia," he said.

Presentation to the Taskforce

Prof Kiyiapi briefed Sirengo Khaemba about the discussions with NCIC. Khaemba promptly booked an appointment for NCIC to meet the Taskforce on the Re-Alignment of the Education Sector to the 2010 Constitution of Kenya chaired by Prof Douglas Odhiambo. Khaemba was the secretary of the taskforce. A team of NCIC led by the chairperson Dr Mzalendo, vice-chair Mary Onyango, a staffer Munini Nzwili and myself met the taskforce and presented a memorandum, which I read on behalf of the team. Munini had worked on the first draft.

The thrust of our presentation was that the education system must end discrimination in terms of access and provision of teaching and learning resources. All students must get access to quality education irrespective of region, gender, religion or physical abilities. Employment in learning institutions must be fair and representative of all Kenyans.

The following are a summary of our recommendations to the taskforce: (a) Decentralise the curriculum to take into account the interests of the learners and teachers across the country. Centralisation had excluded many groups and contained the perspectives of the politically powerful, thus, promoted political thought and control. Ensure all education laws promote inclusion. b) Ensure adequate allocation of resources to education. (c) Promote the official languages – Kiswahili and English – while protecting and promoting the development of indigenous languages. (d) Devise learning programmes that target nomadic children that take cognisance of their unique and specific needs through mobile and other forms of schools. (e) Prepare learners with lifetime skills to engage peacefully and constructively across cultural differences through practical ways such as; Introduce inter-county exchange programmes for the youth to encourage practical studies on diversity. Promote use of ICT in education. Equip teachers with skills on integration and social cohesion. Create programmes that help high school leavers to transit smoothly to university, such as National Youth Training. Review quota system of admission to secondary schools to end balkanisation of students.

While presenting, I said that in Ghana, the Nkrumah Government introduced and implemented an accelerated development plan with

inbuilt elements of corrective affirmative action to bring the North close to the South. This included a policy of free education for students from the North and scholarships for bright students from the North to pursue an education.

The taskforce adopted most of the NCIC recommendations, including a proposal to develop a policy on nomadic education and integration of Madrassa Islamic Schools in the formal education system.

The Students Conference

On 25th April 2012, 2,200 secondary school student leaders came to the Bomas of Kenya for the students' conference. They had been drawn from all the 47 counties with one of the key highlights being a presentation from NCIC, as agreed with Prof Kiyapi. The students' main concern was the likelihood of violence in the coming general elections. We supported them to prepare a memorandum that they handed over to the Prof Odhiambo taskforce. By the end of the conference, we knew we now had 2,200 student leader voices that understood the need for inclusive practices.

Kenya Institute of Education

Our team met the Director of the then Kenya Institute of Education (KIE), now Kenya Institute of Curriculum Development (KICD), Dr Lydia Nzomo, to discuss ways and means of incorporating cohesion and national integration in the curriculum.

Dr Nzomo asked us to make proposals on citizenship education that should be taught in schools. The objective was to equip Kenyan children with a sense of understanding and appreciation of their country, history, values, aspirations and the need for coexistence. The current curriculum was faulted for encouraging rote learning; exam oriented and too poorly organised to promote citizenship education.

We proposed to work together with KICD to develop radio broadcast and digital content for schools on citizenship education. Dr Nzomo also briefed us about KICD's planned rolled out of a TV digital channel, which we considered a good opportunity to reach out to schools.

We agreed on three areas of partnership with KICD. The first was disseminating information through KICD's *Curriculum Watch* magazine, a publication with a wide reach within the academic institutions. The second was on radio content. The KICD had since the 1970s run school radio programmes through the public broadcaster, KBC, previously, Voice of Kenya (VOK). In using this channel, NCIC could reach all schools. We agreed to provide content based on peace building. The third was a capacity building workshop on cohesion and integration for curriculum developers to identify key issues in curriculums that did not promote cohesion and integration.

Meeting on the national education peace policy

Prof Kiyiapi sent a letter asking me to join his team of Provincial Directors of Education in Mombasa to discuss the Ministry of Education's peace policy. My participation was to ensure that cohesion and integration would be included in the peace education policy.

Peace education had been introduced with the objectives of creating awareness and preparing learners to become good citizens as well as foster appreciation of diversity. However, it was not a stand-alone subject, but embedded in other topics within various subjects. It was taught as part of Life Skills. Co-curricular activities such as music, drama as well as peace clubs also carried the peace agenda. The Ministry had trained 21 master trainers and developed peace education curriculums, a manual, teacher activity book and a storybook. A peace education programme had been launched and plans to hold a national and regional conference were afoot. About 9,000 teachers had been trained and a draft policy was in place. A national stakeholders' forum had also been held.

But the number of trained teachers was still insignificant. The peace education programme was yet to be entrenched into the teacher education curriculum. There was also lack of community initiatives to back peace education. In conclusion therefore the approach used of teaching peace education through other subjects was ineffective.

The meeting discussed the following questions. Were national schools at risk of becoming ethnic-based institutions by taking the route of universities that had become bastions of ethnic differences?

Was forbidding girls from covering their hair in school with scarves a matter against national cohesion? Was the policy of posting teachers in their home areas undermining national cohesion? Why should private school owners insist that only head teachers who belong to their faith can manage their schools? Can we address peace and cohesion education outside of the classroom?

I noted that the education sector was still operating under the old method of provinces, as the counties under the 2010 Constitution would only take shape after the 2013 elections. The Provincial Directors of Education (PDEs) gave reports of progress on peace education.

In Rift Valley which was heavily affected by the 2007-2008 violence as well as the 1992, 1997, 2002 electoral and ethnic clashes, the PDE said 140 primary and secondary school teachers had been trained on peace building. Peer counselling had been introduced and networks such as teachers without borders introduced. Peace education had contributed towards cohesion, respect, discipline and increase in self-esteem. The challenge was that the focus of the training had been on head teachers, some of whom did not implement what they were taught. Follow up was difficult, as monitoring and evaluation tools had not been factored in. Some of the proposed strategies were to infuse peace and cohesion education in curriculums.

In Central Province, the PDE said they had been hard hit by the school riots with many students burning down classrooms. There had been a rise in drug and substance abuse and the National Authority for Campaign Against Alcohol and Drug Abuse (NACADA) had been involved in a road show. There had been several sensitisation workshops. Several *barazas* had been held with students speaking to fellow students on peace and sharing experiences.

Nyanza Province had been heavily affected by the 2007-2008 political unrest and violence. Teachers and district education officers had been trained on peace education initiatives. Unicef had also been providing governance and leadership programmes that supported peace education. Several peace clubs had been set up in schools such as Kisumu Girls.

Nyanza had also began a series of mentorship and leadership forums including one led by women – the education women initiative

that mentored young people. School open day forums such as prize giving days had become avenues for discussions on peace. Nyanza had even celebrated a peace week that brought together different ethnic communities. Other partnerships that had borne fruit included those with the media – with the PDE having participated on radio talk shows. There were also co-curricular activities that promoted peace, such as music festivals in Kisii and Migori.

In Western Province, head teachers had been trained in 2009. The area had been affected not only by the 2007-2008 PEV but the Mount Elgon violence as well.

Coast Province not only suffered the 2007-2008 PEV but had also had violent ethnic clashes in 1992 and 1997. Teachers had been trained, but had not practiced what they had learnt. The province had been in the news over a proposal that students should not wear the Muslim headdress, the hijab.

Eastern Province had not been affected by the 2007-2008 PEV. However, the area was prone to ethnic clashes such as between the Tharaka and Tigania and between the Gabra and Borana. There had been several peace-building initiatives that included the training of teachers.

There were challenges in Meru where children who worked on the khat (*miraa*) farms steadily dropped out of School as they handled huge amounts of money. It was not unusual to find a child with Ksh. 200,000 as pocket money. The education officers were investing in career guidance, to keep children away from war-like activities. This guidance included participation of the children in pastoral programmes, peer teaching, peace clubs and implementing the education peace-building manual.

North Eastern had also not been affected by the 2007-2008 PEV. But like Eastern Province, it was plagued by inter-ethnic and clan wars. Peace education had taken root mainly because my friend Dekha Ibrahim Abdi, had begun the first DPC there. The area had been comparatively quiet but the North Eastern education officer stressed that the youth must be involved in all peace-building efforts and peace structures be put in place for sustainability of current efforts.

In Nairobi Province, 100 teachers and school principals had been

trained. Much of the peace building had been centred on school-based community driven initiatives. There had also been efforts to inculcate values during lessons and extra-curricular activities. There were pro-active group discussions in schools. An initiative that involved setting up of peace clubs that urged Kenyans to give 1% of their time for change and peace had been initiated in all Nairobi schools.

There were many lessons learnt from the initiatives. After the peace education programme had been launched in 2008, there was no immediate timeline for teaching. A number of teachers ignored the peace curriculum because they had not been trained to teach it. The PDEs said that teachers were frequently asking for long-term solutions towards solving conflict. The persistent worry in the room was how best to teach peace education.

The meeting agreed to finalise the peace education policy that would, thanks to my attendance of the meeting, now include cohesion and integration. There was to be continued capacity building of teachers and education officers on peace building, and constant evaluation.

Peace education from a curriculum perspective

Dr Lydia Nzomo, explained that several initiatives had been undertaken to promote peace education through the curriculum. Peace education had been integrated in several disciplines such as Social Studies, English, History and Government, Physical Education and Life Skills Education.

However, there were challenges with this. The first was that infusing peace studies within other subjects did not give it the attention it deserved. Second, teachers were not adequately prepared to handle the subject. Third, there was no system for assessing the subject. The meeting suggested that more practical teaching methods ought to be identified to promote peace education, including identifying and using passages in language lessons.

The Essay Competition²⁶⁰

The essay competition had come up as an idea as Naomi Maina of GtZ and I drove from Isiolo, after the road to cohesion television show.

We were discussing what to do with the youth. We settled on an essay competition asking them for their ideas on cohesion.

Once in Nairobi, it took time to conceptualise as I was so busy. As was the norm, I wrote a concept paper for approval by the Commission. We titled the essay competition around the topics of ethnicity, race and nationhood. We would give the youth who submitted winning essays national recognition. We set up a panel to plan for, and judge the essay competition comprising linguists, historians and education experts. We then put out an advert for the essay competition, printed posters and distributed to schools.

We received 1,197 entries and were particularly gratified to see essays from the Northern most part of Kenya, Mandera. The students identified many reasons that fuel ethnic and racial animosity, among them unequal access to opportunities and education. Importantly too, they suggested several solutions such as promotion of inter-ethnic and inter-racial marriages, equal employment opportunities, admitting students to schools outside their home provinces, ending corruption, and affirmative action for the disadvantaged.

Heroes and heroines were recognised as instrumental in bringing Kenyans together. Our Nobel Laureate Prof Wangari Maathai and several athletes were frequently mentioned. I thought it was important, that young people recognised that a sense of a national shared present and history is crucial for national cohesion and integration.

Key lessons were learnt from the essay competition: Young people knew that the 2010 Constitution provides opportunities and avenues for ensuring national cohesion. Some parents are responsible for fuelling ethnic and racial prejudices and hatred and were not living up to their important role of teaching tolerance and diversity. Some teachers discriminated against children. Young people felt that leaders must heal the nation and refrain from activities that polarise communities. Young people wanted national cohesion and integration promoted through education.

One of the saddest lessons from the essay competition was from Mr Sirengo Khaemba. Mr Khaemba advised us to photocopy the students' papers, and then white out their names. My colleague Joy Mutoka literally spent a weekend at the Ministry of Education offices

photocopying, numbering and then white-outing the names. The reasons for this were that Khaemba wanted to reduce the possibility of teachers or markers favouring or penalising students on account of their race or ethnicity. That is how low we had sunk as a nation. To date, this is one of the issues that constantly disturbs me when I think of student-teacher relationships in Kenyan schools.

We compiled the essays and published them into a book. The winners were recognised at an award ceremony later in the year on 13th December 2011. The winners were also given an opportunity to speak at the NCIC forums countrywide.

Death of Dekha Ibrahim Abdi

Dekha had called me a week before her death asking for a meeting to discuss the essay competition. I almost declined because I was extremely fatigued, but we had much to catch up on, so I agreed and we met at the Java restaurant at the Sarit Centre.

Earlier, while working in Wajir, I stayed in Dekha's house, which she had converted into a guesthouse. At NCIC, we worked together several times on peace education and supported the South Sudanese in developing conflict prevention strategies.

My meetings with Dekha were always intense and this meeting was no different. Both of us were always filled with a very strong sense of urgency that Kenya 2008-2012 was a transition period that may never happen again. So, we started the meeting by discussing strategies for preventing conflict in the forthcoming elections. We talked about our pet concern, how teachers taught in schools, teachers who were part and parcel of a society – biased and divided on ethnic and racial differences.

We mulled over how the essay competition would promote diversity; how to make young people tell the leaders about their vision for the country; and how to communicate to the public in general.

We resolved to take up the messages of the essays to a workshop for drama and music teachers on scriptwriting we had planned for on 18th to 24th September 2011 in Kisumu City.

I updated her on the work we were doing with elders in Nakuru. One of the things we had planned earlier was that Dekha would

organise for some of the elders to visit Wajir. We agreed on dates to be communicated to both teams.

Then it was Dekha's turn, briefing me on the work she was doing, pleading with me to go with her to Garissa, just this time. She was working on cross-border issues between Kenyan Somalis and Somalia Somalis. "The other day I called you when Garissa was on fire and you did not come. You must join me now, let's go to Garissa tomorrow."

I said no. Dekha was involved in a road accident on the way to Garissa the following day. Her husband, who was with her and the driver, died instantly. She died a week later. Later, when I went to Nakuru, I informed the elders that Dekha had passed away.

The drama festival preparations

Early one morning, I went to the Ministry of Education offices to meet Mr Sirengo Khaemba and other officers to plan for the drama festival that was forthcoming. We resolved that the theme of the festival would be cohesion and integration. We also decided that the drama teachers needed to visit a country that was undergoing transition from conflict. I suggested that NCIC could fund raise and sponsor the teachers to visit Rwanda. This was a great risk, as a Commissioners meeting had not approved it but I was fairly confident my fellow Commissioners would approve the idea.

I prepared a concept to convince my fellow commissioners that Rwanda would demonstrate to the teachers how the education system had helped in peace building after the 1994 genocide. They approved. We wanted them to meet the teachers in Rwanda and have first-hand information on violent ethnic conflicts and how they could be transformed or resolved. Above all, we wanted them to see that hate speech is not just a political tool against opponents; it can directly lead to deaths.²⁶¹

During the preparations for the trip to Rwanda, one of our staff members, Liban Guyo had noticed the absence of teachers from Northern Kenya on the list. I was alarmed and asked the Ministry of Education officials who said schools from the region rarely participated in the festival. Halakhe Waqo, a fellow NCIC commissioner, who was himself from the region, disputed that, saying "we nomads have a

drama festival every day of our lives. We sing for our livestock, we sing for our women, who says we cannot perform in the festival?” We insisted that teachers from Northern Kenya had to be included and they were.

Song, Dance, Poetry and Drama Festival

NCIC and the Ministry of Education then worked with 230 drama teachers during a week-long national training workshop in Kisumu to develop scripts that promoted cohesion, integration and peace. Mr Khaemba said that the training programme would prepare teachers to understand conflict and the role drama could play as a tool for integration and cohesion.

Preparations and visit to Rwanda

Halakhe and I were to go with the teachers to Rwanda with staff Munini Nzwili and Linda Ochiel. Halakhe had worked in Rwanda. I had experience in Rwanda as a trainer at the Rwandan Military Academy. The person who organised our visit with the teachers was Richard Kananga, who I had met during the Fellowship in Cape Town. Richard worked for Rwanda’s National Reconciliation Commission.

On previous visits to Rwandan Genocide Museums, a sign I saw had struck me that I really hoped the teachers would see too. The sign said genocide and other mass atrocities did not take place in a day. One death here, nine, deaths there and so on and forth until the dead were in thousands. The deaths happened over a period of time. They started on one day but continued ceaselessly until they reached the crisis level. I hoped that in looking at Rwanda before 1994, the teachers would recognise Kenya before 2007. The script was eerily similar! Hate speech by politicians, ethnic-based stereotypes and inflammatory remarks on vernacular radio airwaves had led to the genocide.

Richard and Claudine

Listening to Richard in Cape Town, I knew that he was the right person to help us achieve what we wanted with the teachers and elders. In 2006, Richard had briefly lived with a family in Seattle, USA, while on

a foreign exchange visit. The host's eleven-year-old daughter, Jessica, followed Richard everywhere asking questions on the genocide in Rwanda.

"Why did you Hutus and Tutsis hate each other?" she asked. "Why did the police not stop the murderers? Where were you during the genocide?" Richard, away from home, speaking to a young girl without the judgemental slant that adults tend to give such matters was very frank and did not hold anything back. He explained to the young girl the Hutu, Tutsi and Twa history. The two decided to set up a pen pal club for girls from Rwanda. Jessica would in turn rope in her friends in Seattle.

On his return to Rwanda, Richard went to Nyamata, one of Rwanda's poorest areas, to seek girls for Jessica's club. He found 22 girls and linked them up with Jessica. Jessica proceeded to found Richard's Rwanda (www.richardsrwanda.org) to support girls in Nyamata to get educational opportunities.

One of the Nyamata girls, Claudine Ingabire, had no decent home. Her mother worked and was paid with food. When Jessica's friends heard the story, they raised US\$1,000, which they gave to Richard to support the family. Richard initially wanted to save the money for Claudine's school fees. However, he changed his mind and applied for land under the *Umudugudu* system that assists poor people to buy land. He was lucky to find a house going for US\$2,000 that had a small space for the family to grow their food. After much bargaining, the owner agreed to sell the property for US\$1,300 with Richard paying the extra US\$300.

When Claudine turned 17, she started calling Richard, daddy and his wife, Josephina, mummy – a testament to the strong bond developing between the two families. This was particularly significant because Richard is a Tutsi who barely survived the genocide and Claudine's family is Hutu. The Hutu girl with a Tutsi father spoke volumes. Indeed, Richard was the right person to manage the visit by Kenyan teachers to Rwanda!

After the training in Kisumu, we selected a representative team of teachers for the Rwanda visit. The teachers were quite familiar with the history of the 1994 Rwanda genocide. However, the training provided

additional background of Rwanda's past and very valuable lessons on the steps the country was taking to move forward in peace. The fact that Rwandans had been forced to coexist by circumstances fascinated the teachers.

The Rwandan visit began with a stop to the Kenyan Embassy, welcomed by Ambassador Makena Muchiri. Prof Kiyiapi joined us. We then split up onto groups, visiting several parts of Rwanda. We had daily feedback sessions, in which the teachers talked of their experiences.

Those who had visited the Nyamata Genocide Museum talked of their shock at how far back the seeds of genocide had been sown. In 1972, the teachers were told, then Hutu President Juvenal Habyarimana had moved Tutsis to Nyamata where they were ravaged in droves by wild animals, and their cows decimated by Tsetse flies. In 1975, the Tutsi refugees living in Uganda and Burundi demanded to return to Rwanda. Habyarimana accused the Nyamata people of supporting the Tutsis in exile and authorised an operation in which hundreds were killed and homes their razed.

In 1990, when the Tutsi led Rwandan Patriotic Front (RPF) guerrilla army, consisting of Tutsi refugees began to wage war against Rwanda, Habyarimana forces descended on Nyamata, waging the now then expected brutal wars of retaliation against the defenceless civilians they could easily access and attack. In the 1994 genocide, the Habyarimana soldiers – *Force Armée démocratique* (FAR) and the Interahamwe Hutu militia had well laid plans to completely wipe out every Tutsi in Nyamata.

One defining element of the 1975 and 1990 attacks were two churches, one in Ntarama and another in Nyamata – five kilometres apart – that provided the only safety for those under attack. In 1994, thousands of Tutsis crowded into the two churches. They underestimated the resolve of their attackers to wipe them out. The machete and club wielding killers entered the church and began hacking and clubbing people to death. The crowded churches presented some logistical challenges to the speed at which they could execute their tasks, so they used grenades, trying to finish off as many people as they could. Ten thousand people were killed inside Nyamata church and 5,000 inside Ntarama church.

The two churches are now museums; never to be used again as places of worship. Shelves upon shelves of skeletons line their walls. In

Nyamata, one of the most gruesome evidences of the savagery of the violence is on display; the skeleton of a woman, killed by a sharpened pole driven through her body, entering her private parts and emerging through her head.

Nyamata church shocks both the body, and the soul, beyond tears or speech. The skeletons of the people who sought refuge in Ntarama church are, like in Nyamata, on shelves. The killers in Ntarama shattered children's heads against the brick walls. Their skulls are on display. The church has been left as it was on the day of the killing, with the belongings of those who sought refuge in the church strewn on the floor. What would you take with you, if you had to leave your house and run for refuge? The people of Ntarama took suitcases of clothes, children took their school homework, books, school report forms and test papers, one father, took a letter from his child from which one sentence stands out "I Love you Daddy". All their belongings are still lying on the floor, where they left them, never to be collected.

We came back to Kenya, with the issues of the Rwanda experience heavy in our hearts and on our minds. As we had planned for the training in Kisumu, Mr Khaemba had told us that in the preparations for the drama festival in 2009, it had been impossible to get teachers from different ethnic communities 'at war' with each other to sit together or to share rooms. In previous years, prior to the 2007-2008 chaos, the teachers had no problem interrelating across communities. But that changed with the violence. Now in Rwanda, we saw teachers from different ethnic communities, the Luo, Kalenjin, Luhya, Kamba and Kikuyu share rooms, food and experiences. Right before our very eyes, we watched them become Kenyans. We knew we now had a team that would fill the gap, in case we needed to call upon support for any of our peace processes.

The original date for Kenya's election was 14th August 2012. So, we had planned the drama festival for June 2012. However, the date was changed after a court ruled that presidential and parliamentary elections would be held in March 2013. Civil servants who wished to join politics were required by law to resign by September 2012. Prof Kiyiapi, who had supported our work so much, chose to resign to run for the presidency. He resigned and therefore missed the drama festival.

Meanwhile, there had been changes at the Ministry of Education. Mr Mutula Kilonzo our Minister for Justice, National Cohesion and Constitutional Affairs had been appointed Minister for Education. Shortly before his transfer, we had gone to his office to discuss NCIC's progress. With the exit of Prof Kiyapi, we now had a new ally in the Ministry of Education to work with.

July-December 2012

After Rwanda, the teachers got down to work to write and rehearse scripts for the drama festival. The students acting out the scripts questioned ethnicism, voiced issues of diversity, preventing violence and promoting peaceful coexistence.

The finals were held at Kakamega High School. I went to the principal's office with Minister Kilonzo, senior Ministry officials and my son Mark. The principal told us that he could already see the fruits of the abolition of quota system in education. Sitting in his office, he could tell whom the Form One students were as they spoke in English or Kiswahili because they had come from different communities. It was those in other classes who still spoke in vernacular, as they all came from the district in accordance with the old rules.

In the hall, the events went on for long hours, going on late into the nights on both the days it was slated for. The competition pitted nursery, primary, secondary, and university students in for performance of original works of art, including dance, theatre, monologues, and film. The students made all the sets and brought them from schools all across the country to the festival. There were many plays that focused on the dangers of ethnicised politics. The students acted out the negative but also the positive of the Kenya they wanted to grow old in. There were elaborate dances, one really moving one from Karima Girls featuring a boy and a girl from different ethnic communities whose parents would not allow them to marry. In the end, the parents are reconciled to their daughter marrying someone of a different group.

We went to Nairobi to witness as the top 20 plays were performed for the President and the cabinet at State House. I saw the fruits of our work. I felt immensely fulfilled from listening to the students speak the truth to national leaders.

There were little boys and girls acting out a campaign to be class prefects modelled on the ethnicised ODM and PNU elections. They even sang one of the inciting songs that both teams, sang against each other '*Domo, Domo*' 'big mouth, big mouth'. In the run up to the 2007 elections, both PNU and ODM, in amazing displays of childishness, had bought space in newspapers to insult each other. The children acted this out. It was exactly what we had wished as NCIC to happen in sponsoring the drama festival but very painful to watch.

The School Debates

At the beginning of June 2011, Julie Gichuru the journalist asked me to join her in a project that she was partnering with the Jamhuri Peace Foundation to run televised school debates. She wanted me to give ideas as well as be a judge on the show. The theme for the debate was "Breaking barriers to national integration".

I was excited. The debates would be fun but they would also involve immense research and a lot of learning would take place. The debates were to be held at Brookhouse School, Nairobi. Julie and I identified other potential judges, namely, Hassan Omar, KNCHR Commissioner, Irungu Houghton, Pan-African head of Oxfam and Barrack Muluka, celebrated newspaper columnist. Prof Kiyiapi would officially open the sessions. Mary Onyango, NCIC vice-chairperson would close.

In addition to the debate, the participating students would be expected to write and submit a two-page essay on the stated theme – "Breaking barriers to national integration". On 25th June 2011, we had our first debates. The participating schools were Alliance High School, Alliance Girls High School, Starehe Boys Centre, Moi Forces Academy, Rusinga School, Loreto Limuru, Aga Khan Academy, Huruma Girls, Loreto Kiambu, Kanunga High School, Thika High School, Nembu High School, Loreto Valley Road Girls' School, and Kiambu High School.

The debates were on several topics that included; Religion is an important dimension of human life to enlighten, unite and promote integration; Communal responsibility is more important than individual responsibility in Africa; Alternative dispute resolution must walk hand in hand with formal judicial processes; School curriculum should teach

inter-ethnic and interracial cooperation and a culture that tolerates diversity can only be learned.

Education reforms

If NCIC was to have any long-term impact on education, then the curriculum had to be reviewed. In the presentation to the Prof Douglas Odhiambo taskforce and in subsequent meetings with KICD Director Lydia Nzomo, we had made a very strong case for curriculum change. Kenya had changed; we had gone through a near civil war and we now had a new Constitution. The curriculum needed to reflect the experiences and legislative changes that had happened as a result. Learners needed to acquire skills, values, attitudes and principles that promoted peace and national cohesion.

I had considerable value to add to the Kenyan process by virtue of my experience having benefited from the British Council's Commonwealth National Human Rights Commissions Project in 2004 as a fellow at the South African Human Rights Commission (SAHRC). I worked with the human rights education team on a curriculum review process that sought to undo the legacy of apartheid in South Africa's education system.

Our proposals for education reforms were informed by local and international experiences. They addressed questions such as how children from different socio-economic circumstances can be assessed on the same parameters and whether cultures and attitudes towards education in South Africa between different races had merged to acceptable South African standards. The SAHRC had the benefit of political will after the end of apartheid and that helped it to influence inclusive education policies.

We held a series of discussions with the Ministry of Education and KICD on how to promote national cohesion and integration through the curriculum.

Although our preference was that national cohesion and integration should be taught as an independent subject to give it the prominence it deserves, that was not practical because it would add an extra load to a curriculum that was already too wieldy. NCIC offered to work with subject specialists to review the content and infuse national cohesion

and integration in all subjects. NCIC would also help in training of the subject specialists on how to teach. We held a series of conferences with curriculum developers to work out the modalities. We worked with NCIC's Dr Julius Jwan and Sellah King'oro. Luckily for NCIC, Dr Julius Jwan later took on the mantle of KICD Director from Dr Lydia Nzomo and implemented the new curriculum.

The Education Bill

The next frontier for influencing education reform was through legislation. Fortunately, the government had embarked on review of education laws to align them to the 2010 Constitution. It is in this context that Education Minister Mutula Kilonzo asked NCIC to make inputs into the Draft Education Bill. I worked with Dr Julius Jwan and Prof Ben Sihanya, a legal expert on education, who was also a member of the Prof Douglas Odhiambo education taskforce. We pointed out the following challenges and gaps. Although the objectives of education included promoting national cohesion and integration, this had not been explicitly stated in curriculum goals and implementation. Schools were supposed to develop a responsible human resource with a sense of civic responsibility. The schools were expected to provide mentorship to the youth and bring them up as responsible citizens, empowered to learn to accept diversity and resolve conflicts with their peers in a shared space. However, this was not happening as envisaged. The education policy and its curriculum had not comprehensively addressed the issue of inclusivity in content and application. The omission of diversity in content and modes of transmission in education had in turn failed to move the country towards integration and inclusion, and to capture the spirit of nationalism. Instead, it had resulted in physical and psychological isolation of students, and an ensuing sense of "us" and "them". The quota system of admission was meant to ensure equity in terms of access to national schools but its application to county and extra-county schools had brought inequalities and balkanised students. The 2007-2008 post-election violence involved the youth and raised questions about the content, methods of teaching, and values learnt in schools. Unrest in schools pointed to the need to embed peace

building and cohesion in the education system. Curriculum packages that promote tolerance would have little impact if they were delivered within educational structures that were fundamentally intolerant and closed. Cohesion and integration education could not succeed without measures to tackle the destructive educational practices that fuelled hostility, and exclusion. We therefore recommended that the government should undertake the following: Ensure that cohesion and integration messages were included in education laws, policies and curriculum. Ensure that practical application of national values and cohesion such as conflict resolution and reconciliation were inculcated as a way of life and not necessarily taught as exam subjects.

To implement the above policies the Government would need to do the following: Implement a new curriculum that incorporated national values, leadership and integrity. Learning should shift from cramming facts to applying knowledge and skills. Undertake capacity building for curriculum developers to equip them with skills to inculcate knowledge and skills on cohesion, integration and peace building. Incorporate national cohesion and integration in the curriculum. Review the quota system of admission to secondary schools to eliminate inequalities and ensure increased interaction of students from different regions and backgrounds. Teacher recruitment and deployment should promote diversity, national cohesion and integration.

Enhancing the Draft Basic Education Bill, 2012

We proposed that the Basic Education Act makes express provisions on peace, integration, cohesion, intolerance, inclusion, elimination of hate speech and ethnicism, and related issues. We also suggested harmonising the Act and other proposed education laws with the National Cohesion and Integration. Given the important role that education plays in cohesion and integration, NCIC would also push for representation in the proposed Nation Education Board (NEB).

There was also need to link section 25(2) to the relevant clause in the Draft Bill to strengthen integration in educational establishments, management, administration, instruction and related educational issues. For example, there was need to provide for collaboration

between educational institutions or management boards and the NCIC to achieve the object of section 25(2) either to the learners in an educational establishment or other persons.

We also proposed that the Draft Basic Education Bill ought to empower the Cabinet Secretary to establish regulations to implement national, regional and international instruments and policies on education, cohesion and integration. We specifically asked that the Bill use the phrases national peace, cohesion and integration to avoid and eliminate the following: hate speech, ethnicism, intolerance, and ethnicity. We also asked that the Draft Bill ensure that matters of cohesion and integration are included in every policy that is developed to address various aspects of education.

We also asked the Minister to ensure that practical application of national values and cohesion such as conflict resolution and reconciliation are taught and inculcated as a way of life and not just taught for passing examinations. The clauses on curriculum, on the National Qualifications Framework or Regulations were all to include attitudes and values.

Challenges and gaps

Although the objectives of education in Kenya appreciated the fact that national cohesion and integration or unity could be delivered through education, this had not been explicitly stated. Legislation on education had not made explicit provisions on integration. The consequence of this had been that policies adopted by various schools and educational institutions lacked guidance regarding integration and cohesion. There was need for clear provisions. We therefore proposed that the Draft Bill should have specific clauses focusing on cohesion and integration in education and how education may foster integration in Kenya generally.

The Minister for Education, Mutula Kilonzo, personally led the work on the Education Bill. He chaired the meetings and went through the Bill, methodically, sentence by sentence. On 30th January 2013, we completed our work. The Basic Education Bill, 2012 became an Act. The suggestions we raised were addressed in sections 4 and 57, among others, of the Basic Education Act. These sections were upheld in Parliamentary discussions.

* * *

The Ministry of Education invited me to a ceremony at State House a few weeks after the passing of the Bill to witness the handing over of a peace torch to the President. The torch had been taken around the country, with stops at every school in the hot spot areas with teachers and students declaring their schools safe zones. I had sat in the planning committee meetings to map the route of the peace torch with Mary Kang'ethe.

At the function, I joined Mutula Kilonzo, Minister for Education and the Education PS Prof Godia as we patted ourselves on the back, speaking of the incredible achievements that we had pulled off in terms of ensuring ethnic and racial inclusion at the legislative and policy levels of the Ministry of Education. This, the Minister said, was really the untold story. The media had covered quite a bit of the extra-curricular activities such as the drama festival and essay writing competitions. Referring to my opinion pieces, he said “you have been writing in the newspapers on cohesion, except our work with NCIC in education.” The Minister continued. “Why don’t you write about our work? People need to know that we have secured our children’s future.”

Chapter 28

Peace! Peace! Peace!: The 2013 Elections

The Commission shall investigate on its own accord or on request from any institution, office, or person any issue affecting ethnic and racial relations.

– **National Cohesion and Integration Act No. 12 of 2008, 25 (2) (i)**

Following a ruling by the Appellate court that the elections should be held on 4th March 2013, IEBC now released a new timetable for the general election. The party nominations were to take place between December 2012 and January 2013.

Conflict was raging, again, between the Borana and the Gabra, a situation exacerbated by persistent cross-border attacks with raiders from both communities escaping easily into Ethiopia. The Endorois and Ilchamus also began to fight over what initially looked like pasture and cattle rustling. In February, the Luo and the Nandi began to fight along the Nyando-Nandi border, disputes over the shared border at Tinderet, Aldai and Muhoroni. In both the Luo-Nandi and Gabra-Borana fights, hundreds of houses were torched. The Luo and Nandi conflict also saw thousands of acres of sugar cane plantations torched. Both the Turkana and the Pokot claimed the ownership of the Turkwell Hydro-electric Power Station and the fertile River Kerio belt. In all this conflicts, there had been several deaths, loss of property and livelihoods. Thousands of people were displaced in all these conflicts. In Turkana, there were attacks between the Pokot and the Turkana over ownership of resources around the Turkwell power plant and the entire Kerio River. NCIC had several teams working in all this areas.

Upon conducting conflict analysis, it was clear that many of these communities were fighting for inclusion in the new county governments arrangements. There was fear that the communities that had bigger numbers would take the especially, coveted Governors positions.

On 11th January 2012, a group of Borana elders and Members of Parliament, not satisfied with our ground visits, had come to our office to discuss the conflict. After they left, we listened to a team of Gabra elders. We welcomed their visits particularly because the violence had spread from Marsabit to Moyale and Isiolo. In Isiolo, the violence had now drawn in the Somali community. We had hoped that the TJRC would sort out the historical injustices between the two communities, but that is not what they wanted to discuss with us. In fact, in a rare show of unity, Borana and Gabra elders had then come together to NCIC, requesting that we ask our sister commission TJRC to leave them alone, as they feared that reviving the memory of the historical animosity between them would bring more violence. They said they preferred peace over justice and had accepted that they would never have both.

NCIC had several meetings with the Minister for Internal Security, Prof George Saitoti, over the rising reports of insecurity. The solution we proposed was the “negotiated democracy” in which the communities agreed on a power-sharing arrangement, with one taking the governorship and the other, Senator and changing positions in the next election.

The death of NCIC vice-chairperson, Ms Mary Onyango

Kofi Annan returned to Kenya for his third review meeting from 5th to 6th December 2011, intended to sustain the gains of the KNDR reform process and promote a national discussion around what was required to build and sustain a progressive Kenya. As soon as Mary Onyango on the programme, knew she was expected to chair a session. She announced she was going to summon all her strength to be there.

On the morning of the 5th Mary insisted on a discharge from the High Dependency Unit of Nairobi Hospital, spent the day at the Kofi Annan meeting and went back to admission as a patient. Few people had any idea of what Mary had to endure to go through the day. She was able to steer discussions on what was needed to build a cohesive united society among other sessions. Mary was at her best when faced with a challenge that took her mind away from the pain that she was going through. She never failed to show up in the office, even after her

chemotherapy sessions. On the night of 31st March 2012, a few hours after we had a lengthy conversation on the Kenya Kwanza campaign, she passed on. One of the issues she asked me to do as we talked on the night she passed on was the launch of the goodwill ambassadors. She suggested that we invite the new Minister for Justice, Eugene Wamalwa to preside over the launch which we did.

Community tensions, dialogue and peace building

I was also involved in leading a collaboration linking NCIC with the University of Nairobi, Makerere University, Coventry University, the British Council and the Institute of Community Cohesion, Coventry. The initiative explored community tensions, dialogue and peace building. On 29th and 30th May 2012, university scholars and grassroots practitioners met in Nairobi to engage on conflict prevention and social cohesion discussions. From the conference, we were able to set up a network that combined practitioners and academics and the continuing sharing of ideas, knowledge and practice.

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SK Maina and I had discussed the need to have a conference on peace that brought together all politicians and various interest groups to discuss ethnicism and other causes of violence and find a permanent solution. He shared the idea with the MoJNCCA and the Head of Civil Service and Secretary to the Cabinet. On Mashujaa Day, 20th October 2011, President Mwai Kibaki announced that the government would convene a national conference on peace. Before that, all the counties would hold peace conferences and provide input to the national conference.

Nearly all MPs, Cabinet ministers, top government officials, private sector representatives, the civil society, and religious organisations attended the national peace conference on 8th to 9th June 2012 in Mombasa. During the official opening of the conference, I gave the PS for Home Affairs Dr Ludeki Chweya our Kenya Kwanza charter. He handed it over to the Vice President Kalonzo Musyoka, who in turn, stood up and read it publicly. He then asked President Kibaki and Prime Minister Raila Odinga to sign it, which they did. The two leaders

were at pains to reassure the nation that all was well.

I met Dr Machage at the conference; he was still very bitter with the NCIC because of having been charged with hate speech despite the fact that he had been acquitted. I arranged to have dinner with him and my two colleagues; Commissioner Halakhe Waqo and the NCIC chairman Dr Mzalendo. At the dinner, Dr Machage explained what he had meant by the words he had uttered; telling us that the new counties would prove his words right. The shared meal went a long way in making us understand each other's positions and the reasons behind our actions.

The most powerful pitch on peace at the conference had come from the Minister for Internal Security, Prof George Saitoti, with whom we had been engaging with as NCIC over the secessionist group, MRC. He had also hosted several meetings in his office with NCIC for the leaders from the North to solve their conflicts. After his speech, Prof Saitoti took to his seat only to rise up again and say he had not finished, to everyone's amusement. He spoke again, emphasizing what he had said a few minutes earlier, that a lot had been done on reforming the police and therefore they would be in a position to prevent electoral violence, but Kenyans needed to do their bit too and solve issues amicably.

We arrived back in Nairobi on 10th June 2012 – after the peace meeting to the news that Prof. Saitoti and Orwa Ojodeh had died in a plane crash in Ngong forest, that very morning.

Goodwill Ambassadors

I had floated the idea of setting up a team of goodwill ambassadors in November 2009 to my NCIC Commissioner colleagues. The idea was to tap into resourceful and highly respected people to communicate cohesion and integration ideals and support NCIC work in alternative dispute resolution.

In 2012 the NCIC finally settled on a list of people that we sent off for vetting to the Ethics and Anti-Corruption Commission and the National Security Intelligence Services (NSIS). By the time we completed the exercise, four of the proposed ambassadors were no longer available. Two of them, Nobel Laureate Prof Wangari Maathai and Dekha Ibrahim Abdi had passed away. The other, Dr Willy Mutunga,

had become our new Chief Justice and was therefore ineligible. Mr Justice Isaac Lenaola also declined because of conflict of interest with his role as a judge.

We eventually put together a list of impressive personalities. We had retired Generals' Daniel Opande and Lazarus Sumbeiywo, Bishop's Lawi Imathiu and Cornelius Korir, Canon Peter Karanja, Prof Abdul Ghafur Busaidy, Sheikh Abdillahi Abdi, athletes Paul Tergat, Tegla Loroupe and Catherine Ndereba, Ambassador Ochieng Adala, Florence Mpaayei, Pheroze Nowrojee, Patrick Obath, Manu Chandaria, Ambassador Amina Mohammed, Dr Mary Ciambaka Mwiandi, Prof Judith Bahemuka, Zarina Patel, Julie Gichuru, Adam Hussein, Priscilla Nangurai, Canon Naomi Waqo, Ikal Angelei and Samia Omar, musicians, Eric Wainaina, Julius Owino, stage name Juliani and Teddy Kalanda who had composed the song *Kenya hakuna matata*. (*Kenya no problems*) The song had become Kenya's tourism anthem and was further made famous by the movie *Lion King* and Emmy Kosgei the girl who had brought excitement into the promulgation of the new Constitution ceremony with her song, *Taunet Nelel*.

On the 29th of August 2012, the goodwill ambassadors were to meet with the Chief Justice Dr Willy Mutunga, Commissioners Ahmed Yassin, Halakhe Waqo, and myself together with Commission CEO, Hassan Mohammed. Our chairperson and five commissioners had left for the US and I was acting chairperson. But this was an extremely difficult time. Violence had begun in Tana in a conflict between the Pokomo and the Orma ethnic groups. In Mombasa, Sheikh Aboud Rogo, a radical preacher had exhorted youths to fight Jihads had been shot. He had been involved in run-ins with law enforcement officers and had been in custody several times charged with murder and terrorism. He had a huge following and there were several demonstrations in Mombasa. We combined our meeting with an interfaith press conference to address all this issues raging all over the country. The Chief Justice welcomed the formation of the goodwill ambassadors particularly their role in alternative dispute resolution saying;

"The Constitution of Kenya, 2010, recognises alternative dispute resolution and raises its status to a judicial principle. Specifically, the Constitution requires the Judiciary to promote alternative forms of dispute resolution,

among them reconciliation, mediation, arbitration and traditional dispute resolution mechanisms, as long as they are not repugnant to justice and morality, or are inconsistent with the Constitution. Judicial officers are required to embrace the principle of alternative dispute resolution in their daily work, but they do not have a monopoly on its use.

Reloading Uwiano

The Uwiano initiative of 2010 had spurred several similar initiatives locally, regionally and internationally. These initiatives included a Call for Peace and M-Kenya *Daima* campaigns by KEPSA, *Amani 2012* by Oxfam and other partners, *Uchaguzi* by a host of civil society organisations, *Tuvuke* by Ford Foundation and others such as *Brand Kenya* and *Peaceful elections* in Kenya, *Towards 2012* and *Beyond*, (an initiative of PeaceNet and Saferworld).

The capacity to link early warning to early response, we knew, was Uwiano's strength and niche that needed to be nurtured and exploited to its fullest potential. We needed to reengineer the Uwiano Platform that had been tried and tested in mobilizing and coordinating peace building initiatives and providing conflict early warning and early response mechanisms, to take the lead in ensuring that Kenyans engaged in a peaceful process during the forthcoming elections. To give the profile it deserved, we invited the Head of Civil Service and the Cabinet Mr Francis Kimemia to officially re-launch Uwiano Reloaded. We also invited heads of foreign diplomatic missions, ministers and permanent secretaries, peace and human rights civil society people. I served as the master of ceremonies and led the room in observing a moment of silence in remembrance of Mary Onyango, our late vice chair. We shared our conflict analysis findings at this meeting.

The Cohesion and Integration Taifa Awards

Part of our communication strategy was to hold an annual awards ceremony to recognise and reward individuals, institutions and groups that had made remarkable contributions in promoting national cohesion. We called them *Taifa* awards. *Taifa* is the Kiswahili word for the nation. We named some of the awards in memory of Kenyans who had passed on and made a contribution in their fields. They included

Nobel Laureate Prof Wangari Maathai, Dekha Ibrahim Abdi for her peace-building work, Mary Onyango, NCIC vice-chairperson and Geoffrey Griffin, the educationist who was one of the founders of Starehe Boys Centre.

The awards did not have monetary value but consisted of a symbolic sculpture and a certificate of achievement. We advertised for nominations in the media and set up a steering committee chaired by Marsden Madoka, who had served Kenya in various capacities including as Minister for Foreign Affairs and also Minister for Internal Security. NCIC paid for space in several dailies advertising the categories of awards and asking Kenyans to nominate people. The steering committee and NCIC team travelled across the country to verify the shortlisted candidates. NCIC contracted Kioko Mwitiki, a famous sculpture artist to create the artwork prizes for the winners. UNDP paid for the venue of the awards. Invitations were sent out. The final list of awardees was to be approved by the NCIC. Unfortunately our terms as NCIC commissioners would end before the conclusion of this exercise.

Chapter 29

The Cohesion Quest Shows

The Commission shall identify and analyse factors inhibiting the attainment of harmonious relations between ethnic communities, particularly barriers to the participation of any ethnic community in social, economic, commercial, financial, cultural and political endeavours, and recommend to the Government and any other relevant public or private body how these factors should be overcome.

– National Cohesion and Integration Act No. 12 of 2008, 25 (2) (j)

As the country geared up to the March 2013 General Elections, numerous voices were raised to support peace efforts. We were to elect a President and Deputy President, Senators, County Governors, Members of Parliament for 290 electoral constituencies, Members of County Assemblies (MCAs) and Women County Representatives. All of this was to be done in one day. These were to be the first elections held under the new Constitution. Elections for six different candidates in one day were going to be a real test. The presidential contenders were: Martha Karua (Narc-Kenya), Raila Odinga (Cord), Uhuru Kenyatta (Jubilee) Musalia Mudavadi (Amani coalition), Peter Kenneth (Eagle Alliance), Mohammed Abduba Dida (Alliance for Real Change), James Ole Kiyapi (Restore and Build Kenya), and Paul Muite (Safina).

As we headed towards the elections, it became extremely important to keep the dialogue on ethnicity and race alive and involve as many Kenyans as possible. We received several requests to organise more televised conversations similar to the Road to Cohesion shows. I drafted a concept paper for presentation to the Commission meeting. My fellow commissioners approved it unanimously.

We approached Nation Media Group to air the conversations. We asked the head of NTV, Linus Kaikai, if he could moderate the conversations, and he accepted. This time, our approach focussed on

communities in conflict, minority groups and presidential aspirants. One of the most important conversations involved members of the secessionist MRC who for the first time were able to speak on national television about their grievances. We also brought on board Kenyans of Asian, European and Arab descent to discuss issues peculiar to them.

Bridging the Rift – the Kalenjin and Kikuyu wars

The Kikuyu feel that they hold the economic power of Nakuru. The Kalenjin feel they are the indigenous people, but they sold off their land. They are like an old man who has married off his daughter. They feel the Kikuyu have come in and taken over. The Luo and Luhya cannot do much and when trouble begins between the two elephants Kikuyu and Kalenjin, it is we who are the grass that suffers.

Elga Riaga, School headmistress, Luo

On 13th August 2012, the Cohesion Quest show was recorded in Nakuru,²⁶² usually considered a volatile county with every election year spelling trouble. The show was held six months to the elections and it was obvious Nakuru had changed. There was visible cooperation between the Kikuyu and Kalenjin. Violence had occurred in Banita in Nakuru the week before over a land matter and the NCIC and Nakuru elders, in a joint Kikuyu Kalenjin effort, calmed the situation.

Wilson Leitich, now the Kalenjin chair of the Nakuru Peace Process, told his personal story that traced the Kikuyu and Kalenjin history of animosity.

“I am from Kipkelion in Kericho and a Kipsigis Kalenjin. I remember 1942 for two things; the ‘njaa ya muhogo’ cassava famine and the first Kikuyu I ever saw. We Kalenjin admired the Kikuyu. We were then all working for the colonialists in their farms. We helped the Kikuyu fighting for independence in Mau Mau with food until the war was over. Prior to independence, we began to have differences. The Kalenjin were in KADU with the Luhya led by Masinde Muliro, and the Coast people led by Ronald Ngala. The Kalenjin were led by among others, Daniel Moi and Taita Towett. Mzee Kenyatta was in KANU with Jaramogi Oginga Odinga, so the Kikuyu and the Luo were together. He defeated KADU and led the country. KADU broke up.

Some years after Daniel Moi became President, trouble began in the demand for many political parties. This soon became translated into

ethnic differences. The Kalenjin opposed multi-partyism, which the Luo and Kikuyu supported. I was Chair of KANU in Nakuru and was concerned with the many small groups of Luo and Kikuyu people that huddled together discussing politics. Soon the Kikuyu were expressing their support of multi-partyism through waving two fingers while shouting 'ni igiri' (we want two) and the Luo were doing the same thing, saying 'wana rio' (we want two) saluting with their two fingers. Both were saying, in their vernacular that they wanted a multi-party system with at least two parties yet Daniel Moi stood for a single party with him at the helm. The Luo and Kikuyu were together on this. I was not happy and I called a meeting at Afraba Stadium that was heavily attended in which I announced that if anyone was seen holding up two fingers they should have one of them cut off and it should be brought to me. The media and those wanting multi-party demonised me and I was in all the newspapers for weeks."

The problems included the unresolved issue of the IDPs and old generation politics, of people wanting to keep leadership within their ethnic communities. The youth wanted to be involved in decision-making.

Nevertheless, the mood was upbeat and the audience was categorical that they did not expect any violence in the coming elections largely due to the NCIC-sponsored Nakuru Peace Process. Part of the optimism was that it had been agreed that people go to elections by consensus through the use of "negotiated democracy"; the informal process introduced by our NCIC chair Dr Mzalendo Kibunjia that would ensure each of the communities was represented in the leadership of the county. The audience also proposed that national cohesion be incorporated in school curriculum to secure the youth from ethnicism.

The Axis of Rivals – Kisii, Kipsigis and Maasai wars

We recorded the *Axis of Rivals* in reference to three warring communities the Kisii, Kipsigis and the Maasai, found in between the Borabu and Sotik border on 13th August 2012.²⁶³ The Maasai of Narok were also represented in the show. There had been ethnic clashes every election year since 1992. The Akiwumi report had given an explanation on the reason behind the conflicts:

"Because of the demand on, and scarcity of land in their respective areas, the Kipsigis and Kisii have tended to find an outlet into the sparsely populated Maasai land. Many of the

Kipsigis and the Kisii, as well as the Kikuyu bought land from the Maasai and settled there, and embarked on agricultural activities which in a way, interfered with open grazing practised by the Maasai.”²⁶⁴

In the 2008 post-election violence many were killed. Communities had withdrawn into themselves until peace initiatives, some of them led by NCIC begun to rebuild trust between the communities. The situation was so bad that the communities could only buy market produce from their “own”.

The audience said cattle-rustling, reprisals, conflicts between individuals taken as community issues were a common cause of the conflicts. Many of the youth were idle, unemployed and ready to be paid small sums to rustle cattle. During the elections, people tended to get away with criminality. Cattle rustling between the communities had been a traditional practice, but it was now a deliberate catalyst for ethnic clashes.

“Conflict in Kenya during elections begins with politicians and is tribal based. Presidency politics is linked to Member of Parliament and councillors, as the President must have his people. The issue is with these ethnic communities who come to Narok for business, charcoal burning, and who do not give the Maasai their votes. We the Maasai will cause clashes in order to evict them during elections so that they do not vote, and the politician starts this. The aggression can begin with missing cattle, or even domestic matters.”

Chairman of Maasai Council of Elders

The border conflict between the Kipsigis and the Kisii concerns a former colonial settler area between Sotik town and Nyansiongo area. Prior to colonialism, it was a homeland of the Kipsigis. The place is called Chebilat. After independence, this area was given to Kisii community without, perhaps, a consensus. The Kisii occupied the place up to Keroka town and felt this area should be given to them. The conflict takes place during elections as a result of political incitement.

Prof Samuel Nyanchoga, Kisii

The reason for the conflict is power, which is turned into one of resources. Politicians use the issue of land to divide the communities. The competition

comes when the political elite is divided. When competition begins to be very steep they start to use ethnicity, turning ethnic groups against each other. South Rift is not the only part that colonial settlers lived in; so it is no excuse for the violence.

Tirop arap Kitur, Kalenjin-Kipsigis

The Maasai had several complaints: the Kisii, Kikuyu and Kipsigis had taken advantage of them by buying their land at very low rates and brought in new names for places with Maasai names such as a place called Mong'are, a Kisii name. The Maasai were afraid that communities with more numbers would take over political leadership and disinherit them and they were subjects of stereotypes from the Kisii, Kikuyu and Kipsigis.

The Maasai were bitter that they were not running for political office in the homes of other ethnic communities, yet others were running for electoral seats in Maasai land. There was a strong contention that the Maasai in Narok should hold the political leadership to avoid a situation such as had happened in Trans Mara where the Kalenjin took up leadership positions in Maasai land. Peace would come if support was given to trans-border social projects such as microfinance projects that brought people from all communities together. Ethnic communities in public office would have to be mixed up so that, for example, more than one community staffed border schools in Borabu and Sotik.

Tirop arap Kitur ended the discussions with a poignant observation asking: "Are you aware that your community may be the majority in a County and a minority in the other? Where you are majority, treat the minorities well so that your community is treated well where they are the minority. The constitution says we should take care of the majority and also the minority."

Endless War I: The Land of Turmoil

Baringo County is often referred to as the *Land of Turmoil* because four communities living there – the Tugen, Ilchamus, Pokot and the Turkana – are frequently fighting.²⁶⁵ The participants in the show explained the

reasons behind the conflict. The conflict between the communities was over boundaries, cattle rustling and access to natural resources such as Lake Baringo.

IEBC had not been able to solve the boundary disagreements. The communities had cases against each other in court. Some of the communities had successfully litigated their issues against the government. A two-judge bench of Mr Justice Joseph Nyamu and Mr Justice Mathew Emukule had issued an order on 18th December 2006 that the Ilchamus community be given their own constituency. They had argued their case on the basis of marginalisation since independence. The Ilchamus in the show said the Pokot and Tugen began attacking them more frequently after the court ruling.

The Endorois had gone even farther, all the way to the African Union. They had begun by lodging an appeal in 1998 in the high court of Kenya, which ruled in favour of the government. In 2003, supported by local and international NGOs, they took their case to the African Commission on Human and People's Rights (ACHPR). In 2010, the ACHPR delivered a decision affirming that the Endorois had been violated of their rights and ordering the Kenyan government to restore the Endorois access to their ancestral land with compensation. Later in the same year, 2010, the AU endorsed the ACHPR ruling that the Kenyan government was guilty of violating the human rights of the Endorois by evicting them from their lands to make room for a wildlife reserve in the 1970s.

To end the perennial conflicts, the government needed to build schools to promote education and create employment opportunities such as through irrigation. Cell phone networks could be improved as there was poor connectivity resulting in delays on linking early warning to early response. All communities needed to be disarmed and only the government security agents should carry arms. 'Negotiated democracy' in which each community got a leadership position was important as some did not have the ethnic numbers to succeed in an electoral contest that so heavily weighed on ethnic voting patterns. Discussions along these lines had already begun to happen among the Turkana, Pokot, Tugen and Ilchamus.

Endless War II: the Pokot and Turkana wars

The show on 15th August 2012 sought to understand why for decades the Pokot and Turkana have fought bitter wars.²⁶⁶ Their conflict is one of the least understood yet the most intense and incessant. Thousands, if not hundreds of thousands, of the two communities had died. There is hardly ever a body count of the dead, and few are held accountable largely due to the remoteness and lack of infrastructural development of the places the two communities live in. The two communities live in Pokot District, Turkana County, and Baringo County. They fight each other in all three areas.

The Pokot and Turkana told us the government had failed them. Conflict for pasture had always existed; however, the arming of communities by the government to protect themselves from each other had exacerbated it. Politicians had hijacked the conflict and used it for political expediency. If the government enforced the rule of law and protected its borders effectively, peace would prevail in the area.

The Turkana complained that the colonial boundaries had separated them from their kith and kin in South Sudan, Ethiopia and Uganda. In Uganda, they are related to the Karamojong in South Sudan, the Toposa and in Ethiopia the Nyamatong. The Pokot suffered the same fate, split between Kenya and Uganda. NGOs were also accused of contributing to the conflict so that they could access donor funding to solve it.

The discussants called for establishment of education institutions to give the youngsters a chance to study; impartial disarmament of the communities; ending of cattle-rustling and creating councils of elders from the warring communities to mediate over disputes.

Tides of Discontent: Mombasa Republican Council

On 24th August 2012, MRC, the group seeking to secede from Kenya, appeared for the recording of the show, at the Mbaraki Sports Ground.²⁶⁷ By this time, the MRC had made a number of advances aimed at disassociating themselves with Kenya such as destroying their identity cards and acquiring their own, MRC branded cards. They occupied the interest of not just NCIC but the country as well. I had spoken

to Ngumbao Kithi *The Standard* Bureau Chief in Mombasa who had assisted our chairman and myself meet the MRC, on other occasions, seeking a solution that could stop them from agitating for secession.

From our discussions, it emerged that the Coast people believed that there was entrenched discrimination against them through government policies such as for issuance of identity cards. The MRC spokesperson Rashid Mraja explained why they had decided to lead calls to secede from Kenya. I have carried his words verbatim.

MRC aims to remove itself from being led by Kenya, to gain self-rule. This country called Pwani (Coast) was joined to Kenya through agreements, from 1800 until the agreement of 1963. So, Kenya has not ruled Pwani, and Pwani has not been ruled since it was formed. It was under custody of the Kenya colony but never under the custody of independent Kenya. Therefore, Pwani is a different entity from Kenya. There are reasons why we must separate. The UN Law tells us that a people who are marginalised have a right to separate. There are many injustices at the Coast such as land ownership, lack of access to resources, poor education, and discrimination in government jobs.

Someone in the audience said that the land issue remained a time bomb spoken of quietly as NCIC had outlawed hate speech but could do nothing on hate feelings. Tana River had been drawn into the MRC narrative. Part of the reason, we were told, was that the government had invited investors to acquire land and the residents were afraid that they would become squatters. Concern was expressed on whether the existence of NCIC was just a formality considering that Tana River had peace committees for more than 10 years yet there had been inter-ethnic violence. The post-independence presidents were not wholly to blame, we were told. The region had held the Ministry of Lands portfolio for long with two Ministers being from the region who the locals said had done nothing to address the land situation.

The MRC spokesperson opined that: “The reason why the Coastal leaders had been unable to influence was because they did not have their own political parties from the Coast. They had depended on political parties from the country called “Kenya” not from their country, “Pwani”. When one depends on political parties from Kenya, they have to follow the dictates of the one who has requested them

to vie on their party ticket.” Displaying a coin dated 1888 inscribed Mombasa; the MRC spokesperson said the coin was proof that Pwani had money before Kenya as a country came into being. Therefore, “Mombasa was a nation before Kenya became Kenya”. The British colonial government gave Mombasa to Kenya, he argued. But Pwani, the Coast was not Kenya. Kenya was only a custodian.

The Silent Minorities

The show featured the Kenyan Indians, Kenyan Whites and Kenyan Arabs.²⁶⁸ The show was also recorded on 24th August 2012, at the Mbaraki Sports Ground.

Fr. Gabriel Dolan: *Although I am a minority and aspire to be a Kenyan citizen, I do not feel like an outsider and I have never felt like I was a foreigner. Occasionally some children may call me Mzungu (white person). I have lived in Kenya for 30 years in Turkana, Eldoret and Mombasa. I have never been made to feel unwelcome and that is why I am still here. So it is for me a good experience.*

Nivi Murkejee: *I also do not feel like I have been marginalised at all. I was born in Kenya and this is my home. I just sometimes get questions regarding my colour and the texture of my hair. A few children also call me Mzungu although I am Kenyan Indian. I have always felt this is my home and I have a sense of pride and patriotism when I see Kenya excelling. I also feel pain when I see Kenya not excelling.*

Suleiman Shabbal: *I am Kenyan and have never felt anything other than Kenyan. Being of Arab descent is an irrelevant issue because I am just one of the many races in Kenya.*

Mike Eldon: *I am often in a room where I am the only white person. Typically I don't notice it until sometime much later when I am home. It is that irrelevant, unimportant, and insignificant. Like Fr. Dolan I have been here 35 yrs. I feel welcome. I chose to stay; I am married to a Kenyan and this is a wonderful country. To a large extent we are an individualistic country, where when we are close to people, we judge them as individuals rather than by their colour or community. The challenge is to get up that close to judge them individually.*

The show sought to understand why the silent minorities had reduced in public life, including in the vying of electoral positions over the years. The participants explained that the Kenyan Indian and the white communities were largely working in the private sector.

They were very active in engagements with government and had representation in professional associations: as engineers, lawyers, and in the manufacturing industry. They held high profile leadership positions in the private sector but avoided politics except the Kenyan Arabs who were well represented in electoral positions and government. However, they felt discriminated against in the issuance of identity cards, as they had to prove citizenship more rigorously than the indigenous black Kenyan.

Father Dolan expressed concern that the Kenyan Whites and Indians were considered minorities, yet they controlled a lot of wealth and were able to influence politics, economy and social enterprises. Having worked for many years in places such as Turkana and Pokot, he wanted a differentiation between the wealthy minorities like Europeans and Asians, and the poor minorities consisting of the indigenous communities. Those who have wealth were able to make choices. Father Dolan, based at the Coast and working with squatters, wanted NCIC to spend energy on the impoverished communities that had been denied access to services such as those in Tana River. The big indigenous ethnic communities were fine, as they were running Kenya and had already fronted their own presidential aspirants for the coming elections, a luxury the poor minorities could not afford.

Although the Kenyan White, Arab and Asian communities were few in terms of population, they controlled the country's wealth. There were very many Whites and Asian landowners in Kenya who preferred to remain invisible. But invisibility was not the same thing as being unable to access power. They kept away from Kenyan politics because it had such a bad reputation. From NCIC's audit, the minority communities did not apply for positions in the public service. Their children also attended mainly private schools.

The silent minorities had an interesting take on ethnicism. There were differing views, with some feeling that it was not as big as imagined and that it was a political problem, particularly high, around election time. What was required was visionary leadership. Others were of the opinion that the divisions were more economic than ethnic. The conclusion was that the country could not rely on the politicians to end ethnicism. It was up to the technocrats, civil society and religious

leaders, to focus the country on Vision 2030 at the national and county levels.

The Presidential Aspirants Cohesion Quest Show

On 31st August 2012, we held the presidential aspirants Cohesion Quest Show. We sent invitation letters to all the presidential aspirants. Raila Odinga failed to show up because of confusion at his secretariat. NCIC had met a representative of Uhuru Kenyatta and William Ruto, who told us the two could not come for an unscripted TV show in which they could be asked questions on anything, including the ICC yet they could not deal with that on air.

Those who came to the show were: Raphael Tuju, Party of Action (POA); Musalia Mudavadi, MP for Sabatia, United Democratic Forum (UDF) Party; Prof James Ole Kiyiapi, Restore and Build Kenya (RBK); Peter Kenneth, Kenya National Congress (KNC); Cyrus Jirongo, Federal Party of Kenya (FPK); Martha Karua (Narc-Kenya Party)

Commissioners Halakhe Waqo, Dr. Ahmed Yassin, Rosemary Were (who was in charge of media and communication) and I represented NCIC. We had carefully selected the audience for the show from the goodwill ambassadors, including Manu Chandaria, Patrick Obath, Tegla Loroupe, Catherine Ndereba, Mary Mwiandi, Florence Mpaayei and Zarina Patel. The aspirants discussed a number of challenges bedevilling Kenya, which they pledged to address should they ascend to power. The following are some of extracts of their conversations:

Raphael Tuju: *A conspiracy of factors affect Kenya. Where there is extreme poverty there are likely to be problems such as people fighting over basic things, for example, in Turkana and Pokot areas, and recently Tana River. Lack of education makes it easy to mobilise people along clan and ethnic lines. The easiest and cheapest way for politicians to mobilise people is along clan, ethnic, race, and religious lines. Then one does not have to deal with the heavy issues like youth unemployment or poverty. Ethnicity is a very potent political tool.*

Musalia Mudavadi: *There are three issues. First there is greed, both by those seeking public office and their associates. Second is poverty. The third aspect is inequality and selfishness. That is the basis of these ethnic tensions.*

Prof. James Ole Kiyiapi: *Everyone wants a good life, to put food on the table, educate their children, and be able to have means of livelihood. When this is*

compromised it creates tension and restlessness. This is amplified when we fail as a society to focus on the key pillars of national cohesion. The first one is equality, what we call social justice. If you have an unequal society some people will always feel they have been left behind. There is also the issue of public participation when people do not know what is going on, when they are not fully engaged by leadership. Then there is the question of ensuring institutions that are responsive to the challenges of the day, for example, the rule of law do not fail. Finally, there is integrity. When people cannot trust a leadership, then we do have a problem.

Peter Kenneth: *Lack of cohesion has been brought about by inequality in distribution of state resources, poor leadership that thrives on ethnicism, lack of services. The citizens are paying taxes so that they can get services. So if security is not provided, the people react. Provision of services, security, infrastructure, water, healthcare and education are key yet not all citizens access them; leading to inequalities and dissent.*

Cyrus Jirongo: *This problem is historical. The independence Constitution that was negotiated was a devolved Constitution where we had seven regional governments. Within three years, the centralists had destroyed this devolution. The leaders then declared Kenya a Republic, and went on to remove the regional governments, which dealt with distribution of resources and in 1969 enacted the Transfer of functions Act. That totally centralised resource allocation. The centralised system failed to deliver. Therefore, a number of communities in this country feel marginalised and excluded from the centre and that has been the problem. It is purely a problem of poor leadership. It is purely an issue of how we treat each other as Kenyans and especially those in leadership.*

Martha Karua: *We must begin with ourselves, as leaders, because this results from deliberate incitement by leaders and disinformation campaigns. Yes we have inequality and marginalisation. How does it help a marginalised person to attack another marginalised person from another ethnic community? When you look at the result of ethnic tension, it is never directed against the elite or leaders like us. It is the poor against the poor. We need to open our eyes and see that there are things we need to address, but in a better way. It is better when the marginalised and poor come together to put in place a leadership that will address their issues rather than imagine that by further marginalising each other or by violating each other's rights, they will address those problems.*

The politicians contended that they were not the only promoters of ethnic animosity. They cited the media, which propagated what the

politicians said, as one of the culprits. The aspirants said the leadership at independence had set a bad example by forming a government of cronies, a system perpetuated to the present day. Power was seen as a means of accessing state resources and maintaining that power. The new Constitution was meant to cure these ills but its implementation was fraught with challenges. The aspirants agreed that political leaders needed to take responsibility and accept that they were part of the problems the country faced. Leaders had incited communities against each other and promoted hate speech through the media.

In retrospect, the violence after the 2007 elections could have been averted if each individual leader had taken responsibility to end it. Cyrus Jirongo had done so in Lugari, as MP, cycling around the constituency urging people to take in the internally displaced. If leaders had taken the responsibility of asking their voters to be calm, peace would have prevailed. Politics had been reduced to insults instead of tackling issues. The next president would need to inspire the nation and unite citizens. Kenyans needed to understand that it did not matter whether the person in leadership was your brother or not so long as he or she pursued good policies and delivered services.

The next government needed to tackle ethnicism right from the president's office. Appointments to government jobs would have to be representative and inclusive. The Constitution was very clear on solving inequalities and its implementation would help to tackle some of these aspects. Devolution as laid out in the Constitution would help to do this. Devolution provided for affirmative action. Provision of basic facilities and service would create stability. The education curriculum could be structured to inculcate the need for cohesion and integration in young people.

Parliament had enacted laws on hate speech but the same politicians militated against their implementation. But the problem was that leaders who incited the public were never rebuked. The Aspirants pointed out an additional problem. Politicians liked speaking in their mother tongues when making hate speeches. They used coded messages and spoke in parables, which were difficult to decipher, hence made it difficult to penalise them.

The goodwill ambassadors engaged the aspirants with Patrick Obath asking for integrity in leadership. Manu Chandaria raised a question on insecurity and violence. The aspirants were unanimous that insecurity was a major threat to the country and required strategic approaches to eliminate it. The debate ended with the aspirants pledging to support the winner of the elections, noting democracy was about winning or losing.

The Conclusion of hate speech cases and low level perpetrators PEV cases

On 14th December 2011, Chief Magistrate Gilbert Mutembei had found that the prosecution failed and/or neglected to comply with clear provisions of the Evidence Act as regards the production of electronic evidence and acquitted Hon. Wilfred Machage, Hon. Fred Kapondi Chesebe and Christine Nyagitha Miller.

On 18th August 2012, the taskforce set up by the Director of Public Prosecutions (DPP) Keriako Tobiko in April of 2012 chaired by the Deputy Director, Public Prosecutions, Dorcas Agik Oduor issued a statement that cleared some 8,869 suspects. The taskforce said that the police did not have essential information making it difficult to pursue the cases.

In September 2012, NCIC and Muslims for Human Rights (MUHURI) would withdraw the case against the Minister Hon. Ali Chirau Mwakwere after he met the condition that the two organisations had set of making a public apology. Nairobi Chief Magistrate Lucy Nyambura cleared the minister and withdrew the case under Section 87 (A) of the Criminal Procedure Code.

PART VII:
COHESION AND INTEGRATION: A
DREAM DEFERRED



Chapter 30

Spreading the word: Peace Ambassador

The Commission shall promote respect for religious, cultural, linguistic and other forms of diversity in a plural society.

– **National Cohesion and Integration Act No. 12 of 2008, 25 (2) (e)**

On 8th September 2012, the day our first term as commissioners ended, I left for the University of San Diego, California USA as the Joan Kroc Institute of Peace and Justice (IPJ) had selected me as a woman peacemaker of the year. I aspired to bring to the Women Peace Makers (WPM) programme some suggestions on peace-building based on my experience. For me, the benefit of the WPM programme was that it endorsed what I had always worked for, human rights and peace building as practical goals I was interested in learning from the WPM programme what others had done. Was there a community of practice that brought together peace builders and human rights practitioners in the absence of violence as a conflict prevention strategy that we Kenyans could learn from?

Woman peacemaker of the year

I wished to benefit from the experiences of women human rights practitioners and peace builders in the WPM programme. How did they manoeuvre in peace building spaces that men insist can only belong to them? Was there any cross-cultural writing or documentation that had been done to bridge understanding on women who lead mediation processes?

While in San Diego, I spoke about my experiences in tens of forums both within the university and other parts of California. One of the highlights of my being at the University of San Diego was a meeting

with Cherie Blair, the wife of Britain's former Prime Minister, Tony Blair. She had come to the university to give a lecture on human rights, justice and the law in her capacity as a human rights barrister and part-time judge. She gave highlights from her career but what was more meaningful for me was the intense conversation that I had on Kenyan politics with her. I was surprised that she knew so much about our politics, particularly the details of the post-election fallouts of 2008. As we spoke, she held my hand, looking deeply into my eyes. She is a good listener. I liked her. I told her about the Nakuru Peace Process, and the role her husband's description of the Irish peace process in his book *Tony Blair, A Journey* had played in it. She said to me, "I must tell him about it. The Irish peace process is one of the highlights of his life".

Being in San Diego was like shock treatment for me. The peace and quietness was difficult to live with. I was like a drug addict deprived of drugs. I constantly turned on my phone, to find news that some clans, ethnic communities were fighting again. I had to delete SK's number so that I would not call him from San Diego. I wanted to rest. This was the place of much needed rest that I craved for, to rest my weary bones, but it was not restful. I was fraught with worry over Kenya. What would happen to my country? This was the country my grandparents had fought for.

On the day when I made my first public presentation at the University of San Diego, I had shed tears. I had decided to tell the positive stories of four women I knew who had tried to make security, justice and peace work. My aim was to move away from the sad stories coming out of Africa. I said that there were women in Kenyan communities organising and achieving real change, leading to more peaceful, gender just societies, in conflict prevention and peace building.

I spoke of the complexities of women roles in peace building and conflict prevention and how difficult, given these roles, it was to make security, peace and justice to work. During war, women were peacemakers, perpetrators and victims. Men, women, boys or girls react in a different way to violence. The disruption of the social network during conflict affects all groups in a society and can change their roles. Women develop a coping strategy that translates into trying to act like men.

It has also been proven that violence against women increases both during the conflict and post-conflict period, I said. I talked about Rebecca Lolosooli, of Samburu, the woman who had started a women's only village and began building individual skills for women to cope. Then I spoke about Jane Anyango and her skills in organising communities across diversities. My choice for participatory and dialogue based leadership was Fatuma Abdulkadir Adan of Marsabit. I took the opportunity to tell Dekha Ibrahim Abdi's story with regard to her huge influence in peace building. I ended the presentation with a sentence that Dekha often said – 'an egg, like peace, is delicate and fragile, but given the right conditions, it gives life'.

For close to the two months that I lived at the *Casa de la Pas*, the tears would not go away. I would cry without sobbing, the tears flowing endlessly, even as I conversed, or cooked, even while at the gym. There seemed to be a reservoir of the tears somewhere in me. My housemate Nancy Sanchez, a journalist from Colombia kept me sane. She had very well developed gallows humour, which was her coping strategy to survive in the kind of work that she did. She had been documenting human rights abuses and the survival strategies of everyday people in Colombia during their decades' long war. Nancy was also a very good photographer, her attention to detail extraordinary. She told me she had learnt how to take good pictures – photographing dead people. It was important, she said, that she photographed them carefully, paying attention to details such as birthmarks because her photographs were in many cases the only way that relatives had of identifying the dead whose bodies they would never access.

On one occasion, there was a function at the IPJ and they had all these flags out, including the Kenyan flag. Nancy asked me to pose for a picture with the Kenyan flag. The tears began to come again. Wiping my tears with the Kenyan flag, I asked her 'Nancy, have I gone mad? What could be wrong with me? Why am I crying every day?' Nancy answered, "You are like my boss, Gloria. In Colombia, she is very strong but as soon as she sets one foot outside the country, Gloria begins to cry. Something inside crazy women like you and Gloria demands that in your country, you have to be strong, but as soon as you feel safe, you become babies. Cry away then you can go home and be a tough mama!

I benefited from a talk by a counsellor, Chrystal Green. She explained that in the kind of work that we do, it was important to be a conduit, a sieve, not a container. She emphasised areas that needed to be balanced in life: social and personal relationships, play, recreation and growth, spirituality and work. I understood that I had a burn out after working for three years without leave. She explained that burn out was not a sign of failure; rather, it was a state of emotional, mental and physical exhaustion. **It was in San Diego that I realised the folly of assuming that in three years, NCIC could undo Kenya's biggest problem of ethnicism.** I also realised how unrealistic I was to see myself as so integral in undoing ethnic baggage that I had no control over. I particularly liked the quote from Chrystal that, "burn out is less the sign of failure but more proof that you gave all of yourself". I had given all of myself.

I thought of the words of Reinhold Niebuhr in the Serenity Prayer often "*God, grant me the serenity to accept the things I cannot change, courage to change the things I can, and the wisdom to know the difference*". I would learn to accept the things that I could not change. Kenya belonged to many people, not just me alone. Kenya was not mine to save alone. At the beginning of the programme, Dee Aker, the programme director took us through an exercise. Each of us had a little pot, which we broke into pieces. We then reconstructed the pots. I keep my broken pot with me to this day, a constant reminder that I don't have to be perfect. Everyone looking at it recognises that it is a pot, however imperfect. That was the way that I decided to live my life. Everyone and myself would have to learn to live with my imperfections.

My tears dried up in the last few weeks in San Diego. The tears had brought a huge sense of relief. On leaving San Diego, I took a flight to Baltimore, USA. When we arrived, the air hostess announced that we were to stay in the plane for a brief exercise in honour of a brave marine, whose name I did not get. When we were getting into the plane, I had noticed a uniformed guy in green sitting on the first seat. I thought we were honouring him for something brave he did.

The air hostess invited us to look through the windows on the right and watch as the marine 'finally came home'. "God bless America," she said. I was sitting right next to a window on the right. The uniformed

guy in green stepped down onto the tarmac, onto the right side of the plane. Seven guys with those bright orange half-coats came up to the side of the plane and opened it up and removed suitcases. Then they rolled out a box that looked like a fridge lying down. The uniformed guy stepped up to the box and saluted.

When they wrapped the box in an American flag I realised that the marine we were honouring was inside. The air hostess was very professional. There was no break in her voice, no sense that she had been talking about a dead person. A man who had given his life for his country was being bundled out as a luggage. I got mad at the casualness of it all. Looking out through the window, I saw that they had wheeled the marine into one of those trolleys that carry suitcases. Then he was driven off; just the marine, and the driver of the tractor. So lonely in death; a man who had spent all his life in war in the comfort of the numbers of his squadron, barrack or platoon. The uniformed guy got into a separate jeep and followed them. I began to imagine that boy, I assumed he was just a young boy, dead, all his dreams gone, his high school sweetheart's tears, his mother's grief and wondered for what possible cause he could have died. Then my tears came back again and my shoulders heaved with grief.

I should have saved the tears for Kenya. Landing in Nairobi on 12th November 2012, I was confronted with the news that armed bandits had killed 40 police officers in Baragoi, Northern Kenya. It was the worst single incident for Kenyan police in living memory. Hundreds of families had been forced to flee the area as the government mounted a major security operation to flush out the bandits and disarm the people. This was a major crisis, but we should not have been surprised. How were armed bandits able to kill 40 policemen? By having had to fend for their own security for decades. The North was showing its hand and rebelling at all the years of neglect by Government. Parliament had extended the NCIC term for one more year. So I walked into a situation that demanded so much of NCIC and Uwiano. But my tears never came back. I had learnt how to be a sieve, not a container.

Chapter 31

Countdown to 2013 elections

*Mr Temporary Deputy Speaker, Sir, it is also important to note that Hon. Members of this House, who **provide the political leadership in this country, agree that our politics, which is organised along ethnic lines, is really the key problem.** I hope that we can, as the political leadership of this country, address the problem of political mobilisation along ethnic lines.*

– Mr Abdikadir Mohammed

December 2012 had begun with the sizzling statement made by Kofi Annan on BBC warning Kenyans not to elect politicians who had been indicted by the ICC. Annan said that it was not in the interest of Kenya to elect leaders who could not freely interact with the international community. Annan had issued statements earlier in the year, in which he stressed the need to elect leaders of integrity as enshrined in Chapter Six of the 2010 Constitution. He had expressed reservations that there were delays in rolling out some of the reforms, including recreating the police force.

Raila and Uhuru endorsed as 2013 Presidential Candidates

On 22nd December 2012, Raila Odinga was endorsed to head the Coalition for Reforms and Democracy (CORD) political party as the presidential candidate. His long-time rival Vice President Kalonzo Musyoka was also endorsed as his running mate.

On 23rd December 2012, a coalition of parties called Jubilee consisting of the new political parties The National Alliance (TNA) led by Uhuru Kenyatta and United Republican Party (URP), led by William Ruto was formed. Uhuru Kenyatta was declared Jubilee's presidential candidate and William Ruto was endorsed as his running mate. The IEBC had cleared Uhuru and Ruto to run on the grounds that although Chapter Six sets a high threshold for ethical conduct for persons seeking public office, the Constitution guaranteed every suspect the right to a fair trial, presumed innocent until proven guilty.

With this development, the sons of Kenya's founding fathers President Jomo Kenyatta and Kenya's first Vice President Oginga Odinga were to run against each other. Raila Odinga's was running on a reform strategy while Uhuru Kenyatta's campaign message was peace and national reconciliation. Would they divide the country into two solid blocs of hate as their fathers and later Mwai Kibaki and Raila Odinga had? My fears were real. If anything, the post-election violence and the ICC trials had entrenched ethnic politics in a way that was unprecedented in the history of the Kenyan state. My wish was that a group of voters whose "ethnic community" was Kenya would emerge; these would be voters who would rise above ethnic bloc thinking and vote for the best candidate and not necessarily as usually happened "for one of our own".

Meanwhile, tension and security concerns continued in the country. At the end of November 2012, suspected Al-Shabaab militants had killed three KDF off duty soldiers in Garissa. The military and police mounted a campaign that saw six people, including two women, two children and a government chief shot and scores injured. Garissa erupted into riots protesting the killings of civilians by the soldiers.

On 26th December 2012, the government's Kenya National Focal Point on Small Arms and Light Weapons released a report, *"Availability of Small Arms and perceptions of Security in Kenya: An Assessment"* which indicated that Kenyans were arming themselves in readiness for the elections or relocating to places in which they felt safer.²⁶⁹ The report also drew attention to the Narok ammunition case where a man had been arrested with a huge cache of weapons. Interestingly, the report had noted; "Interpol had recently rated Garissa – the North Eastern region's main town – as the safest town in East and Central Africa. Incidents of crime and the use of arms in North Eastern had reduced. This situation had remained so, despite threats of Al-Shabaab infiltration and the use of the region as an arms corridor to other parts of the country.

County Conflict Mapping

In December 2012, we went back to the drawing board as Uwiano to conduct another conflict analysis, this time on the counties, so as to plan for a peaceful election.

Table 29.1: County conflict mapping – December 2012

CONFLICT FACTORS/ISSUES
Mombasa County • Prevalence of organised criminal gangs • Unequal distribution of resources and marginalisation of the indigenous communities • Land ownership and access • Unemployment • Political conflicts • Drug abuse • Potential terrorist threats • Religious fundamentalism • Conflict between formal and informal legal systems (e.g. Sharia vs. formal laws) • Clashes over need for access roads to the beaches • Erosion of traditional cultural values (through tourism).
Kwale County • Organised criminal gangs • Land ownership and squatter problem • Feeling of real or perceived marginalisation • Drug abuse • Unemployment • Boundary conflicts • Human-wildlife conflicts
Kilifi County • Organised criminal gangs • Hard drugs (drug Abuse) in Watamu, Malindi Districts • Real or perceived marginalisation by communities not from the region • Land ownership and the squatter problem • Human-wildlife conflict • Illegal immigrants • Potential terrorist threats • Illegal invasion of gazetted forest at Madunguni
Tana River County • Inter-clan/ethnic conflicts based on alliance formation and positioning for power in the envisaged County Government • Divisive party politics • Ethnicism and clanism • Boundary conflicts with Garissa • Resource-based conflicts (especially between farmers and pastoralists) over pasture, water, in Tana Delta; and especially expansion of river line farms that tend to block pastoralists from accessing water resources • Land disputes including introduction of group ranches and conservancies • Industrial conflicts related to investments especially as large investors speculate on the Lamu port • Poverty • Illegal firearms • Human-wildlife conflicts • Organised gangs and militia problem

Lamu County

- Boundary disputes; Lamu/Ijara
- Fear of unequal distribution of resources as the construction of the Lamu port and other major investments commences
- Real or perceived marginalisation by communities not from the area
- Land ownership problems and the squatter problem
- Organised criminal gangs

Taita Taveta County

- Boundary disputes; Taita Taveta/Makueni, Kwale/Taita Taveta including current dispute over Marungu Ward that is perceived to have been transferred to Kinango Constituency away from Voi Constituency
- Fear of the small communities being dominated by the majority i.e. Taita dominating the Taveta
- Land ownership and the squatter problem
- Unemployment
- Spreading MRC's secessionist influence in Taita Taveta
- Human-wildlife conflicts

Garissa County

- Boundary disputes between Abduwak/Abdalla clans in Fafi District
- Presence of refugees, hence conflicts over resources with host community
- Terrorism attacks by suspected Al-Shabaab militants/sympathisers
- Islamic fundamentalism
- Clanism
- Availability of illicit small arms and light weapons and improvised explosive devices (IEDs)
- Conflicts over resources; pasture, water
- Political disputes/competition along clan lines
- Highway banditry attacks

Wajir County

- Boundary conflicts; Wajir South/Lagdera
- Intra-clan conflicts
- Conflicts over resources
- Land disputes
- Unintended effects of *Operation Linda Nchi*
- Terrorist attacks by suspected Al-Shabaab militants/sympathisers.
- Differences over nomadism, communal land ownership, land grabbing and new settlements in Wajir Town, Habaswein and Lagdera
- Inter clan and sub-clan differences
- Illicit small arms and light weapons

Mandera County

- Proliferation of small arms and light weapons
- Inter-clan conflicts caused by alliance formation and positioning for power in the envisaged County Government, especially among the Degodia and Garre
- Differences over resource sharing e.g. water, pasture
- Terrorism by militia groups e.g. Al-Shabaab
- Land disputes

- Boundary disputes over electoral and administrative units
- Islamic extremism/fundamentalism
- Retrogressive traditional cultural practices
- Influx of refugees and aliens
- Porous borders; Kenya-Somalia border and Kenya-Ethiopia border
- Banditry

Marsabit County

- Political conflicts; political alliance, fear of ethnic domination
- Limited understanding on devolution
- Inter-clan conflicts caused by alliance formation and positioning for power in the envisaged County Government
- Livestock raids
- Conflicts over resources; pasture, water
- Boundary conflicts
- Occasional banditry
- Influx of refugees and aliens
- Porous borders; Kenya-Somalia border and Kenya-Ethiopia
- Islamic extremism/fundamentalism
- Proliferation of small arms and light weapons in Marsabit, Moyale
- Tribal and inter-clan conflict; Borana and Gabra communities in Moyale district alleged to be politically instigated

Isiolo County

- Land disputes in view of construction of the Resort City
- Political conflicts pitting the communities living in Isiolo
- Political supremacy of communities in the devolved Government structure
- Cattle raids within the county as well as from neighbouring counties.
- Boundary disputes
- Conflicts over conservancies
- Inadequate security personnel
- Retrogressive cultural practices
- Mistrust and poor information flow
- Inadequate understanding on the structures of devolution
- Proliferation of small arms and light weapons

Meru County

- Land disputes
- Cattle theft
- Disputes between the host and immigrant herders from Upper and North Eastern region over grazing pastures
- Boundary dispute; border points, Wangira, Matharo, Ndimulo, Mathabithi, Gasiolo, Kafaro
- Political conflicts/political incitement
- Resource sharing
- Retrogressive cultural practices
- Scarcity of pasture and water in Tigania

Tharaka Nithi County

- Boundary issues; border between Tigania East and Tharaka North, Tharaka North and Igembe
- Cattle rustling
- Divisive politics
- Retrogressive cultural practices
- Mistrust and poor information flow

Embu County

- Unemployment
- Drug use/illicit brews
- Land disputes
- Political conflicts
- Inter-clan supremacy conflicts pitting the Mbeere against Embu
- Political conflicts
- Resource sharing manifested in skewed appointments pitting the Embu against the Mbeere.
- Transitional county governance conflicts on possible leadership
- Disquiet over the location of the county headquarters

Kitui County

- Conflicts with herders from North Eastern Province over grazing pastures
- Banditry activities
- Illegal firearms
- Resources sharing
- Mistrust between the Kamba and Somali Communities
- Boundary disputes
- Grazing points in Kora Park and farms

Machakos County

- Land disputes, including irregular land allocation
- Political conflicts based on ethnic identities
- Unemployment
- Sand harvesting

Makueni County

- Highway robberies
- Boundary dispute with Taita
- Resource sharing especially regarding collection of fees by the County Council of Makueni and Taita
- Livestock theft

Nyandarua County

- Organised criminal gangs
- Unemployment
- Alcoholism
- Outstanding land disputes that sometimes lead to conflict between families
- Infiltration of small arms and light weapons from other countries
- Conflicts between pastoralist's communities and farming communities in some districts
- Emerging security threats.

Nyeri County

- Unemployment and idleness
- Alcoholism
- Organised criminal gangs
- Proliferation of small arms and light weapons
- Coffee and farm produce theft
- Conflict between families mainly due to outstanding land disputes
- Domestic violence
- Emerging security threat

Kirinyaga County

- Organised criminal gangs
- Rampant alcoholism, drugs and substance abuse
- Emerging security threats like terrorism, robberies and house break-ins
- High rate of general youth unemployment
- Domestic violence

Murang'a County

- Insecurity, leading to robberies and house break-ins
- Organised criminal gangs
- Formation of political alliances on ethnic lines
- Coffee theft and theft of other farm produce
- Conflicts between families mainly due to outstanding land disputes
- Party politics
- Domestic violence

Kiambu County

- Illicit brews/drug abuse
- Unemployment
- Insecurity
- Organised criminal gangs
- Succession politics
- Business rivalry
- Land tenure system
- Coffee theft and theft of other farm produce
- Domestic violence

Turkana County

- Cattle raids among the communities of Pokot, Dodoth (Uganda) Toposa, Dassanech, Samburu
- Boundary conflicts with the Pokot and Toposa of South Sudan (Elemi Triangle boundary dispute)
- Conflicts over resources; water, pasture, unemployment – KenGen in Turkwell Gorge
- Availability of small arms and light weapons
- Inter-ethnic/tribal conflicts among Turkana, Samburu and Pokot communities
- High level of insecurity
- Rugged terrain that makes conflict response challenging
- County boundaries; the issue of Turkwell dam by the Turkana and Pokot communities
- Potential conflicts over oil discovery
- Highway banditry

West Pokot County

- Cattle Raids/livestock theft
- Boundary conflicts with the Turkana
- Historical land claims in Trans Nzoia
- Difficult terrain; inaccessibility hindering recovery initiatives
- Cultural practices such as FGM
- Commercialisation of cattle rustling
- Inter-ethnic/tribal conflicts among the Pokot, Samburu and Turkana communities
- Conflicts over resources
- Availability of small arms and light weapons.
- Cross border conflicts, between the Sabiny and Karamojong communities of Uganda and Pokot community

Samburu County

- Highway banditry
- Cattle raids/stock theft
- Transitional county governance conflicts
- Negative ethnicity
- Conflict over resources; pasture, water, conservancy – conflict with the Pokot over establishment of conservancy
- Political conflicts
- Insecurity
- Proliferation of small arms and light weapons
- Inaccessibility to the area
- Boundary disputes with Baringo (East Pokot)

Trans Nzoia County

- Unemployment
- Boundary conflicts with Bungoma county
- Land ownership and entitlement pitting the settler communities
- Increased cases of drug abuse
- Proliferation of Small Arms and Light Weapons (SALW) along the border in Chepkube, and Suam
- SLDF effects to Trans Nzoia hence causing problems
- Cattle rustling in Kwanza Division by suspected Pokot warriors and commercialisation of cattle rustling
- Transitional county governance conflicts
- Party politics and alliance formation
- Inter-communal mistrust
- Ethnicism

Uasin Gishu County

- Political conflicts
- Recurrent ethnic conflicts during election cycles
- Insecurity
- Ethnicism
- County boundaries
- Organised gangs e.g. Mungiki
- Manipulation of the electorate to cause violence.
- Limited education and understanding on Devolution.

- IDPs issues of resettlement in Chemusien farm which lies between Wareng and Eldoret districts. It was allegedly reported that the Mau Forest evictees and community from Kipkurere have been allocated the land instead
- Land related conflicts – the issue of the unresolved Wendani Bayette land dispute that has been on-going since 1968 in Wareng district

Elgeyo Marakwet County

- Boundary/border disputes between the Keiyo and Marakwet
- Transitional county governance conflicts
- Cattle rustling/stock theft
- Insecurity

Nandi County

- Cattle raids
- Boundary disputes in Aldai/Muhoroni border
- Land ownership and squatter problem
- Political conflicts
- Ethnicism
- Large number of unemployed youths
- Financial constraints
- County boundaries
- Transitional county governance conflicts around leadership

Baringo County

- Cross-border raids (Pokot East/Baringo East)
- Livestock theft
- Boundary disputes with Samburu and Turkana Counties
- Transitional County conflicts on possible leadership
- Ethnicism
- Political conflicts
- Unemployment
- Proliferation of SALW

Laikipia County

- Criminal activities
- Cattle theft/cattle rustling
- High levels of inter-community mistrust
- Insecurity
- Political interference
- Land disputes
- Proliferation of illicit small arms and light weapons.
- Highway banditry attacks along Rumuruti-Maralal Road
- IDPs' issues
- County boundaries – Laikipia West and Baringo
- Pastoralists vs. farmers
- Human/wildlife conflict

Nakuru County

- Ethnicism
- Party politics and alliance formation on ethnic lines
- Manipulation of voters by politicians
- Gangs and militia

- Perceptions of social marginalisation in Kuresoi by the Kalenjin Community
- Slow pace of resettlement of Mau Forest evictees
- Tensions over economic domination by the Kikuyu followed by the Somali communities in Nakuru
- Unemployment
- Cattle rustling/stock theft especially in Maai-Mahiu and Longonot areas
- IDP issues
- Transitional governance conflicts
- Proliferation of small arms and light weapons
- Political affiliations and interference

Narok County

- Border disputes; Trans Mara West/Kuria East
- Fights for political supremacy
- Control of the Mara Game Reserve
- Cross border conflicts, pastoralists versus farmers in Narok District
- Transitional county governance conflicts
- Land disputes – historical injustice in administration of land tenure
- Human encroachment into wildlife reserves
- Revenue resources dispute (The Mara Reserve)
- Livestock theft along Mashuru, Tanzania-Trans Mara border, Lemek, Olposimoru, Narok-Molo border and Suswa.
- Inter-community rivalry fuelled by politics (Kipsigis and Maasai) in Trans Mara
- Evictions from Mau Forest Complex
- Ethnic intolerance and mistrust
- Retrogressive cultural practices
- Organised gangs

Kajiado County

- Small arms trafficking
- Land and boundary disputes
- Human/Wildlife conflicts
- Ethnicism
- Pastoralists and farmers conflicts
- Transitional county governance
- Party politics
- Over-dependency on land
- Inter-clan mistrust

Kericho County

- Land disputes
- Political conflicts
- Border conflicts
- Cattle theft
- Slow pace of resettlement of Mau Forest evictees
- Transitional county governance conflicts
- Large number of unemployed youths

Bomet County

- Cattle theft between Borabu and Sotik
- Boundary conflicts
- Transitional county governance conflicts on possible leadership

- Oathing to curb cattle theft
- Land issues (disputes, squatter problem, boundary harmonisation)
- Political conflicts/interference especially as parties start zoning off some areas.
- Ethnicism
- Human/Wildlife conflict
- IDPs issues
- Large number of unemployed youths
- Insecurity
- Over-dependency on land

Kakamega County

- Land disputes
- Party politics based on clanism and alliance formation along ethnic lines
- Organised gangs manifested in burglary and theft
- Alcohol and drug abuse
- Livestock theft especially on Kakamega/Nandi County border
- Clanism/sub-tribe rivalry

Vihiga County

- Divisive politics along sub-tribal lines manifested in rivalry politics
- Clanism/sub-tribe rivalry
- Cattle theft
- Domestic violence
- Boundary disputes; administrative boundaries.

Bungoma County

- High cases of insecurity in Cheptais attributed to the availability of illicit small arms and remnants of SLDF
- Political conflicts based on political alignments at the national level
- Land settlement disputes
- Inter-community disputes
- Boundary disputes; in Lwandanyi of Bungoma West District between Sabaot, Teso and Bukusu communities in Mount Elgon
- Unemployment
- Drug abuse
- Increase in consumption of illicit brews in Mount Elgon
- Domestic violence
- IDPs issues in Mount Elgon
- Cattle theft especially cross border with Uganda

Busia County

- Land disputes
- Insecurity
- Cattle theft
- Domestic violence
- Boundary disputes
- Clanism/sub-tribe rivalry
- Political alignments

Siaya County

- Political conflicts
- Land use disputes
- Increase in consumption of illicit brews
- Political intolerance
- High levels of poverty

Homa Bay County

- Political conflicts (party politics)
- Land disputes
- Illegal trade on the Island (Mbita)
- Bhang trafficking
- Increase in criminal activities and armed robbery

Migori County

- Boundary disputes between communities
- Cattle theft within and across borders
- Inter-clan and inter-tribal conflicts
- Porous border (with Tanzania)
- Smuggling of goods across the border
- Disputes over water and fisheries resources such as Migingo island dispute
- Retrogressive cultural practices
- Land disputes
- Inter-clan conflicts based on alliance formation and positioning for power in the envisaged county government

Kisii County

- Land use disputes as a result of the high population in the area.
- Organised criminal gangs
- Livestock theft
- Cross border security challenges
- Bhang trafficking
- Party politics and emerging rivalry over the county (devolution) system of governance
- Witchcraft.

Nyamira County

- Cattle theft between Borabu and Sotik
- Boundary disputes
- Cross border security challenges
- Highway banditry
- Witchcraft

Nairobi County

- Unemployment causing idleness among youths
- Organised criminal gangs (ethnically aligned gangs in the informal settlement areas mainly in Mathare, Kibera and Kayole areas)
- Political interference by politicians with vested interests
- Insecurity
- Increase in illegal SALW which has led to rise in criminal activities like carjacking, and violent robbery
- Landlord/tenant conflict in Kasarani, Lang'ata, Starehe and Embakasi districts
- Ethnicism

- Land disputes including irregular allocation of land
- Boundaries disputes; Woodley and Kenyatta Golf course wards, which were not included in the new Kibera Constituency by IEBC
- Party politics and alliance formation including manipulation of voters
- Unplanned city expansion, including on road reserves, mushrooming of slums
- Business rivalry

* * *

One of the major decisions made by the IEBC was that voter registration was to be carried out using the Biometric Voter Registration (BVR) Kits. These were expected to erase incidents of fraud including the phenomenon in previous election years of ‘dead voters’. The BVR kit would recognise individual thumbprints. Voter registration was done for 30 days, from 19th November to 18th December 2012. Observer teams from all the political parties witnessed the registration exercise. There were many complaints from those not able to secure identity cards in time to register to vote.

IEBC then announced that the diaspora voters that NCIC had expended a lot of energy on, preaching peaceful elections would not be able to register due to time and logistics challenges. The diaspora community complained bitterly about this decision. Later, IEBC would announce that diaspora within the East African Community could vote.

IEBC released the provisional voter numbers that showed that 14.3 million voters had been registered. This fell below IEBC’s target of registering 18 million voters. On 28th December 2012, IEBC announced the Notice of the General Elections, which was to take place on 4th March 2013. The party nominations deadline was 18th January 2013 while the submission of nominees of party lists for nominated positions was 31st January 2013. The notice also indicated that disputes arising from the nominations would be determined within seven days of the lodging of the dispute with the commission.

On 21st January 2013, the Inspector General of Police, David Kimaiyo made public the details of reports that some people in Kibera were buying weapons to cause election related mayhem.

Worrying about the IEBC

On 13th January 2013, IEBC announced that it had opened the voter register for inspection. Voters were to verify their details after which

the commission would clean the register. At the end of the exercise IEBC announced that it had identified and removed from the register some 20,000 voters for multiple registrations. The political parties held their nominations on 17th January 2013. Public schools, which were to be used for voting, were closed for the exercise.

On 19th January 2013, IEBC announced that the political aspirants who lost during their party primaries were not allowed to defect and seek tickets on other parties. The law stipulated that political parties were to nominate candidates 45 days prior to the elections; so the window had closed.

The parties' nominations were marred with violence and irregularities. The only party that held fair nomination was Martha Karua's Narc-Kenya. The most watched nominations were those of Jubilee Alliance, led by Uhuru Kenyatta, Amani Coalition, led by Musalia Mudavadi and the Cord Coalition led by Raila Odinga. NCIC monitored all the nominations.

In Nyandarua and Nairobi I witnessed a lot of disorganisation. The predominant coalition in Nyandarua was Jubilee Alliance, and everyone was trying to get the ticket. In Kenya's ethnic based politics, the party leader, able to pull as many people as possible to his or her side usually takes the day in whole regions. The domination of a region by a party is usually referred to in Kenyan election parlance, as "the wave". Nyandarua had been taken by the Jubilee Alliance wave. All knew that a party nomination by Jubilee Alliance in Kikuyu or Kalenjin dominated regions or Cord Coalition in Luo or Kamba dominated areas meant that the actual election was in many cases, a mere rubber stamp. The "elections" in those areas would be well and truly over on the nomination day. So much for democracy; in many parts of Kenya, the ethnic community determined the political party, and the political party determined the winner.

The nominations for the three big coalitions – Jubilee, Cord and Amani – were hotly contested. There were protests in Nairobi, Nyanza and Central regions over irregularities. At the end of the nominations, five people had been reported killed. This was a bad beginning towards the peaceful elections that we had all been planning for.

On 20th January, the Inspector General of Police unveiled a list of hot spots, all of them in the areas where the violence occurred during

the just concluded party nominations.

IEBC was forced to arbitrate the disputes over primary nominations. There were many cases where the political parties had issued certificates to candidates who did not actually win. More than 200 complaints were filed before the IEBC disputes and resolution panel. The Committee consisted of four IEBC commissioners and one official from the DPP's office. One of the commissioners on the disputes and resolutions panel Mohammed Alawi was, like me, one of the principals of the Uwiano platform for peace. Many of the complaints were on certificates given to losers. Both TNA led by Uhuru and ODM led by Raila registered most complaints, including nepotism and discrimination, in which certificates had been given to the relatives of the party leaders.

The disputes and resolution panel had seven days to complete the arbitration process. Those dissatisfied with the panel's decisions could lodge their cases in court. When the process was over, a lot of people who had lost defected.

Although I knew the IEBC was well prepared and ready for the task, I was nevertheless anxious about the potential challenges for Uwiano and IEBC. These challenges were emphasised by the violence that accompanied political party nominations. The IEBC had put in a number of measures to ensure free and peaceful elections, but I had a feeling things were not fool proof.

Similarly, the Judiciary had indicated its preparedness by issuing a statement that it would hear and determine any Presidential election results petition within two weeks. The Judiciary had formed a working committee on election preparations that further announced that the election petitions would be certified urgent. The Director of Public Prosecutions (DPP) Keriako Tobiko said that he "recognised that failure to effectively investigate, prosecute and handle election offences may lead to a breakdown in the rule of law leading to substantial harm to individual or public interest and in some cases the abuse of the court process."²⁷⁰ The DPP had established inter-agency committees to analyse data and had set up a quick response team to deal with emergencies during the electoral period.

I called Ahmed Issack Hassan the IEBC chair one Sunday morning and suggested to him that he needed to set up a support base of people

who could tell him the truth. I reminded him of his predecessor, Samuel Kivuitu, and how lonely and helpless he looked as the post-election violence began. After lengthy discussions, we agreed that he would set up a team of people to help him with ideas to resolve emergencies. I became one of the three people.

During our first meeting, Issack told us of two security threats he had already faced. One was reported in the press. The other incident, of people who had trailed him and blocked his gate was unreported. Our biggest concern, as the team around Issack, was more on what could happen after the election, not before. In 2007, violence happened after the election results were announced. We wanted to avert that. The Constitution provided for space in which the presidential candidates could face a run-off between the first and the second if nobody achieved a clear win in the first round. The period during the runoff would be the most dangerous with potential for violence.

Uwiano's Strategies for a Peaceful Election

Uwiano held a series of meetings to map out future scenarios. We recognised that the possibility of national violence was minimal compared to 2007. The violence in the previous election years of 1992, 1997, 2002 and 2007 had all began in the Rift Valley, between the Kikuyu and the Kalenjin. Now the two ethnic communities were on the same side, although a number of the issues they fought over were still unresolved. Uwiano's key strength remained that of linking early warning to early response. Our image had been severely dented by the Tana River killings, in which mobs had killed dozens apparently due to ethnic rivalry related to the contest for Governor in the county. Between 3rd August 2012 and 10th January 2013, the country had witnessed a series of violent conflicts between the Orma against Pokomo communities. More than 30,000 people had been affected by the ethnic based political clashes. Uwiano had notified the police but the killings had exposed that the infrastructure of response, the police, existed, but it was slow and bedevilled with problems that inhibited its efficient operationalisation. The police were being blamed and they in turn were blaming the politicians for inciting the people.

Uwiano Principals met Inspector General of Police, David Kimaiyo, who expressed support of the organisation's activities. He gave us a brief on the on-going Tana River violence. By the time of his appointment, 179 people had lost their lives and more than 13,500 had been displaced. The violence had continued for six months defying all these interventions. The 2012-2013 crisis in the Tana Delta was perhaps the worst of its kind since Kenya's 2007-2008 post-election crisis. Public emotions ran high as people wondered whether Uwiano was getting early warning information and what it was doing with the information. Upon being sworn in, Kimaiyo's first move had been to go to the Tana. He had also been very vocal in the media, reassuring Kenyans that the rule of law was still in place. Law enforcement officers' morale had been boosted by his efforts, and we began to see the Tana River situation brought under control.

Preparing for the 2013 General Elections

Uwiano principals met regularly with Dickson Magotsi the head of the secretariat and agreed on some key strategies as elections drew near. We established through baseline surveys that Uwiano was close to the *wananchi* but quite removed from the politicians. If we were to have any positive impact on the political leadership, we would have to show early response as a direct benefit of early warning. We needed to do a number of things. Key among them was to get politicians engaged in peaceful activities. We would also have to ensure that the community level mediators were working. A communications campaign was paramount. The lessons we had learnt from Tana River was that Uwiano in Nairobi was too far to coordinate early response to early warnings. We needed to devolve. The DPCs and PeaceNet Community-based networks would provide support and structures for the devolved Uwiano.

Mombasa worried us a lot. We had held several meetings with the MRC leadership, as NCIC, but we were getting nowhere. They insisted they wanted to secede. We were sympathetic to their needs, but we could not support their plan to break away from the country. The MRC leadership had told us that they had 30,000 registered members at the Coast. They also claimed to have thousands of sympathisers. They also had told us that they were self-sufficient, having raised enough funds for court cases.

NCIC was invited by the Parliamentary Committees on Administration of Justice and Legal Affairs and Security to discuss MRC. When it was my turn to speak, I said that the difference between MRC and say an organisation like Mungiki, a gang which ran extortion rings in Nairobi and Central Province and known for its brutality, was that nobody ever owned up to belonging to Mungiki. However, at the Coast, everywhere we went, ordinary people owned up without being prompted to being members of the MRC. They were proud to belong to MRC.

Meanwhile, the government had intensified crackdowns even as some of the presidential candidates seeking the Coast Province vote ceased to condemn MRC when they realised how influential they were. The candidates scuttled our efforts to seek conciliation between the government and MRC as each promised them recognition. The MRC themselves had become very active litigants. They had, ironically for people, who declared themselves not Kenyan taken the government to Kenyan courts for banning MRC, challenged the privatisation of the port of Mombasa and the review of names and boundaries of wards and constituencies in the Coastal region. The courts gave a ruling that declared that MRC was not illegal. This emboldened them and shocked the government.

We decided that Uwiano would advise the government to run a campaign to demystify MRC claims, including reviewing of post-independence agreements and also continue with what Prof. Saitoti had been doing, which was to address the issues of marginalisation. We would also revisit our Uwiano structures in Tana River and find out what had gone so wrong on ensuring early response. We also needed to establish the role religion was playing in Mombasa in the increasing tensions and radicalisation of the youth in addition to the proliferation of witch doctors confusing locals. There were clear concerns on the role of the elite and local politicians who regularly paid MRC's fines when its members were arraigned in court. Meanwhile, MRC continued to be fed by a huge pool of mainly unemployed youth.

Another area we focussed on was partnerships with the private sector on peace initiatives. Uwiano needed to focus on long-term measures. We could not afford to get in and out of the communities since it was

important to manage the aftermath of the establishment of devolved government units and the ethnic splits that were bound to occur.

To put these plans into practice, we held a public county forum at the KICC that was opened by the PS in the Ministry of Internal Security, Mr Mutea Iringo. The forum brought together Regional Coordinators (RCs), the County Commissioners (CCs) and the DPC chairs, some of who also doubled up as the PeaceNet county members.

Reports from the regions

The objective of the meeting was to improve Uwiano's linkage of early warning to early response by developing terms of reference for county response centres. We got reports from the different regions. Nyanza RC Francis Mutie said there was a threat of idle youth, who politicians hired as 'security' and were capable of doing anything they were told. Muhoroni was worrisome because tensions between the Nandi and the Luo communities were running high.

He also had worries over the irrational behaviour of football fans supporting teams in the English premier league especially Arsenal and Manchester United. In the case of a power blackout during the matches, the fans went on a rampage. It was important that Uwiano advised Kenya Power and Lighting Company Limited (KPLC), now Kenya Power, to ensure that there were no power blackouts during the electoral period, as this would be taken as an excuse for idle youth to attack and destroy property. This could easily be interpreted as ethnic violence when it was not and act as a trigger to more violence.

Central Kenya RC Kiplimo Rugut said that even though the area was homogenous and consisted of mainly the Kikuyu, it hosted several organised criminal gangs. The most visible was the Mungiki that was predominant in Kirinyaga, Murang'a, Nyeri and Kiambu.

In Kirinyaga, residents had created vigilante groups to protect the community from Mungiki. The vigilante groups had turned out to be worse than Mungiki itself. The region had experienced infiltration of illegal arms and was a transit zone for weapons from Moyale to Nanyuki, and from Garissa through Thika Road to Nairobi. The weapons were widely used in criminality in Thika, Nairobi and Kiambu.

There were pending land problems in Nyandarua. There was widespread unemployment throughout the region. The key emerging

issues in Central Kenya were political alliances and succession politics, party affiliation along ethnic lines, business rivalries, crime and drug and alcohol abuse, he said.

Eastern RC Claire Omolo, the only woman RC, spoke of the proliferation of small arms coming in through Garbatulla in the north of the country. Several peace meetings had been held, but had not completely solved the cattle rustling. The solution was to seal the routes that the raiders used.

Western RC James Ole Seriani said the region was peaceful but there were several potential sources of conflict such as the Chebyuk settlement scheme in Mount Elgon. The *shamba* system that involved farmers being allowed to cultivate food crops in forests had proved controversial. Disputes related to land and clan rivalries were also high.

Unemployment had aggravated a culture in which youths benefited from being paid to wage violence. Unexpected disputes also came from courts that had been issuing unpredictable orders on sugarcane. More resources for peace actors were needed. The IEBC was faulted for creation of wards without consulting RCs.

Coast RC Samuel Kilele said the province had many cases of insecurity, including Tana River and Mombasa. Tana River was the epicentre of violence steeped in deep-rooted hatred between the Pokomo and Wardei. The electoral politics had widened the rivalry. In Mombasa, perennial concerns of marginalisation, radicalisation of the youth and activities of MRC posed serious security threats.

The North Eastern RC Ernest Munyi said the key security threats were proliferation of small arms from Somalia and rivalry among Somali clans of Garre and Degodia.

We moved back to the field as Uwiano, painstakingly conflict mapping each and every region, identifying actions to be taken in case of violence. We met the region's security teams and local opinion leaders, conducted in-depth conflict analysis and assigned action. This way, we were able to set up county cohesion response centres.

Scenario mapping with IEBC Chair

The meetings with Ahmed Issack Hassan were meanwhile on going. We worked on different scenarios in regard to the presidential election's

outcomes. In the event that those occurrences came about, we also discussed how to reduce their impact on the election process and referred to the IREC and CIPEV reports. There had been press reports that the biometric kits had failed as IEBC tried to test them even as the commission had reassured the country that they would work, having used them in the 2010 referendum. IEBC had invited political parties to send IT experts to assess the electronic system to be used in the transmission of election results on the day that the kits had failed. We also knew that they had not worked very well in Ghana, where Issack and his team had spent time observing their use.

The scenarios we imagined were both negative and positive.

a) Scenarios before the vote

Negative: A candidate or a running mate dies. Violence erupts, Lateness in ballots in terms of printing and supply

Positive : Concerted peace efforts yield fruit

Unpredictable results: A candidate pulls out and supports another

b) Scenarios during the vote

Negative: Postponement of voting, Biometric system collapses and is compromised, Voting takes too long, Violence mars voting, Executive interference damages integrity of the process

Positive: Peaceful and uneventful voting

c) Scenarios during the announcements of results

Post voting

Negative: IEBC splits with Commissioners divided and making accusations against each other, IEBC voice is drowned out by party observers and action on ground, Time delay between local media and IEBC announcements, One party 'wins,' the other disputes and refuses to exercise the legal option, Ethnic violence: 41 against one, all other ethnic communities against the Kikuyu (because of Uhuru Kenyatta) or all other ethnic communities against the Luo (because of Raila Odinga) , Class war emerges if either Cord or Jubilee wins, Violence

arises from past unresolved issues, Fights between the national and county governments, Jubilee wins, Cord disputes; Cord wins, Jubilee disputes. Run off in a poisoned environment

Positive : Poll successfully and peacefully concluded with all accepting the results, Emergence of a strong group of Kenyans successfully mediating the conflict, Neither side concedes but voter or either party goes to court

We agreed on the following as solutions to the above scenarios.

a) Pre: If a candidate or a running mate died: IEBC refers to the Constitution and follows the law., Invest in getting a clear and unequivocal position in law supported by leading lawyers, Transform moment of candidate's death into an opportunity to rally Kenyans to come together, Message of condolences to be issued by IEBC strongly designed to calm the nation, Invest in partnerships of key Institutions to stand with IEBC such as the National Council on Administration of Justice, the AG, Chief Justice, and Commission on the Implementation of the Constitution, the Law Society of Kenya (LSK) and the Editors' Guild., Have an informal conversation with the LSK on the matter as soon as it happens.

b) If during voting the biometric system collapsed and voting was delayed actions to be followed were: Prior to voting, IEBC should have taken the precaution of asking Kenyans to wake up early and vote. If biometric system fails, IEBC would fall back on manual. IEBC would immediately issue a proactive statement on the failure of the biometric system that was reassuring, telling Kenyans that their votes were safe and that IEBC was doing something about getting the system to work. IEBC Chairperson Ahmed Issack Hassan was to manage perceptions and use precise calming language in authoritative hourly press briefings. Emphasise that the authority to run this election rests exclusively with the IEBC. Identify the legal consequences on voting extension early enough (the proactive statement of point 3 would have explained this point). Reassert authority using the instrument of the law. For extreme cases extend voting to next day.

c) If during announcements IEBC, like the ECK before it in 2008 split with Commissioners divided and accusatory, we recommended the following actions: Building on relationship with the media and place an urgent request for the matter not to be broadcast to give an opportunity for a fast mediation. The office of the Chair establishes itself before elections as the only spokesperson to the IEBC and the country. Invest in the Chairman's personal security. Above all the Chairman must invest in relationships with Commissioners before elections.

d) Post-election scenarios: Run off in a poisoned environment and violence

Priority action: identify toxics

Scenarios: Violence, Ethnic balkanisation, State machinery reluctant to provide support, Law enforcers actively involved in sabotage, Loss of credibility, IEBC compromised in the eye of the public

Action: Follow the law on declaration of a state of emergency if things completely fell apart, Invest in law enforcement officers who understand the psychology of crowd control, If IEBC is completely compromised, the Chair and some Commissioners should consider stepping aside.

e) In support of all the above, invest in: Clarifying legal powers and options, A team that would retain real expertise – a rapid response legal team consisting of Commission of Experts on the Implementation of the Constitution, AG, Chief Justice, LSK as a first concentric circle, the second concentric circle would be the national level mediators with access and influence over the Presidential candidates. Professional bodies that could issue statements of support to IEBC throughout the four scenarios. Creating friendships now – informally seek out people and organisations and ask for support in advance while promising to exercise good judgment.

We were very concerned about of a number of things. The worst possible scenario would be the death of a candidate or his or her running mate, because the law said that the elections would have to be

postponed for sixty 60 days. We were not sure that the country could survive for that long without falling apart.

Influencing the Presidential candidates to prevent violence

Tension was growing across the country. The violence during the party nominations had scared everyone. The leaders of the big ethnic groups were mobilising their communities to vote for them and teach the others a lesson. The politicians demonised their rivals. The opinion polls showed the election outcomes would be too close to call and that there would probably be a runoff between Uhuru Kenyatta and Raila Odinga. A clear win by any of the candidates would work towards averting violence. The constitution gave directions towards a second vote, a runoff to be conducted in 30 days after the first count. The 30 days for the run-off would be tempestuous. That was when tensions would heighten and explode into violence after the results were announced.

The calls by the international community for Kenyans not to elect people indicted by the ICC appeared to be grating on the nerves of GEMA and Kalenjin voters; communities from which Uhuru Kenyatta and William Ruto came from. The international community and many other sceptical Kenyans appeared confident that the Kalenjin would not vote for, in particular, a Kikuyu candidate and neither would the Kikuyu vote for a Kalenjin, especially not after the post-election violence. Some of the Kikuyu were still living in IDP camps.

In the Rift Valley, one could see the burnt out shells of their former homes. The land issue among the Kalenjin continued to simmer. But there had been indications that those campaigning for the Jubilee were speaking, behind the scenes, to Kikuyu and Kalenjin elders reminding them of previous alliances between the political leaders of the two communities. President Jomo Kenyatta (Kikuyu) had appointed Daniel arap Moi (Kalenjin) Vice-President. When President Kenyatta died, a Kikuyu clique attempted to keep Moi away from the Presidency but was thwarted by another team of the Kikuyu, notably the then AG Charles Njonjo, Mwai Kibaki and others.

President Daniel arap Moi (Kalenjin) had in turn, taken a huge risk in 2002 and chosen young Uhuru Kenyatta, a Kikuyu, as his successor.

This move marked the end of the KANU political party. In 2002, Uhuru Kenyatta's chief campaigner was a Kalenjin, William Ruto, who stood stoically with him as he conceded defeat after losing to Mwai Kibaki.

Beyond this history, three things were working for the Uhuru and Ruto candidacy. The cases at the ICC had created heroes among their communities out of the two as sacrificial lambs. The cases also presented them with a common campaign platform on national reconciliation, presenting themselves, a Kikuyu and Kalenjin as an example of reconciled enemies to Kenyans anxiously seeking reconciliation role models.

The other was the fear of neo-colonial domination. The ICC had still not added the case of a non-African to its stable, despite violent conflict and violence in Sri Lanka, Palestine, Israel, parts of Latin America, among many others. This failure by the ICC strengthened the political case for the two; that the ICC indeed was racist and had neo-colonial designs on particularly black Africans as no action had been taken on Egypt, an African country of people of Arabic extraction despite their rising death toll since the uprising in 2011.

All presidential candidates had done the rounds and sought endorsement of elders from various communities across Kenya.

We were hopeful that institutions would stand strong. The Judiciary, Agenda 4 and Constitutional commissions were doing well. The police service had vindicated itself in the recent messy political nominations. Officers had responded professionally and allowed people to demonstrate without beating them up. In contrast to the 2007 violence, we considered this relatively good progress on the part of the police.

In Uwiano, we acknowledged that we needed new thinking from a non-Kenyan and decided to call our good friend Dr Ozonnia Ojielo from New York to come and help us with new ideas on managing the election.

Dr Ozonnia came, met several Kenyans from civil society, private sector, media and politicians and gave us the verdict. He said that from his reading of the situation, unlike in 2008 when Kofi Annan came in to mediate, it was clear that this particular time, in 2013, there was no appetite in Kenya for external mediation. Yet the country needed

mediators. Uwiano had the country conflict mapped; we were clear that we could communicate to the whole country at the touch of a text message, a radio advertisement, local community mediators, DPCs and community-based organisations. We also knew that all leaders, MPs, permanent secretaries, ambassadors, and faith based leaders were all a phone call away. We had a directory with all their names and numbers and were in constant touch with them. However, there was a gap.

Increasingly, we were unable to influence two key people, the front-runners Raila Odinga and Uhuru Kenyatta. We could reach them all right, but we could not influence them. We needed their support. The only way out was to get support from local national actors, who not only had direct access to them, but also, influence. We needed to avoid the situation that Mwai Kibaki and Raila Odinga had presented us with in 2007, with both claiming the presidency. This time, Kofi Annan was not going to come back if there was violence in Kenya. Commenting on Kofi Annan's statement on BBC, Machel Waikenda, the TNA political party director of communications wrote: "Many Kenyans do not trust Dr Annan. The reverse is also true – there are millions of Kenyans who blindly support him and name themselves, their new-borns and even *matatus*, after him."

Waikenda's sentiments were manifested practically when Kofi Annan came briefly to Kenya. As was expected, he met several stakeholders at the Serena Hotel. When it was NCIC's turn to meet him on 4th December 2013, at 2 pm, I was the only person who showed up. My colleagues did not tell me why they did not come. I had missed out on a lot of information when I was away at San Diego. The Chairman joined us later after I called him. Increasingly, quite a number of Kenyans, particularly in government seemed to have cut links with Kofi Annan. This meant that if we were in trouble again, Kofi Annan would not come back.

This situation meant that we needed people who could stand up to the front-runners Raila Odinga and Uhuru Kenyatta and tell them to accept the results. These people would need to exert the kind of authority that Kofi Annan had on Kenyans in 2008. We needed people who could stop either of them from mobilising their ethnic communities to refuse the results and therefore, precipitate violence. Who were these people who would have the ears of Uhuru Kenyatta

and Raila Odinga? Who were these people who could have a moderating influence over the two?

Group of concerned Kenyans Initiatives

Dr Ozonnia came up with the idea of a group of senior citizens with business, political or personal relationships with Raila Odinga and Uhuru Kenyatta. The group consisted of Lt Gen. Daniel Opande (Rtd.), Mr Joshua Kulei, Mr Wilfred Kiboro and Mr Paul Gondi. The group appointed General Opande as the convener. General Opande and I attended a peace walk in Kibera organised by his fellow NCIC cohesion goodwill ambassador Adam Hussein.

The General told me he had an offer to make that he hoped I would accept. He then asked me to join the group. Dr Ozonnia had also asked me separately, to join. Both of them wanted me to join in my capacity as the Uwiano chair. My contribution would be to give practical information on what was happening in the country. I showed up for the meeting at both Dr Ozonnia's and the General's invitation and the four gentlemen interviewed me at great length on Uwiano. Both Mr Kulei and Mr Kiboro also met me separately and asked me formally to join the group. Florence Mpaayei was also asked to join. We became the link for high-level engagement and mediation with Raila Odinga and Uhuru Kenyatta – the two front-runners for the presidency in 2013.

Lt. Gen. Daniel Opande (Rtd.) was a natural choice because he was the chair of the NCIC goodwill ambassadors and had led UN peacekeeping missions in Namibia, Liberia, Sierra Leone and Mozambique. Mr Paul Gondi was Raila Odinga's childhood friend and Chairman of the Geothermal Development Company (GDC) board. He had vast experience in banking.

Mr Joshua Kulei, formerly President Moi's personal aide, was Chairman of the Sovereign Group of companies and a prominent businessman. Mr Wilfred Kiboro was Chairman of the Nation Media Group (NMG) and previously, the Group's CEO.

The primary objective of the group was to maintain high-level engagement and dialogue between the presidential candidates, key political actors/parties, the government, independent commissions, private sectors, CSOs and the public. We started off by meeting the

Head of the Civil Service and Secretary to the Cabinet, Mr Francis Kimemia. We then met the Chief Justice Dr Willy Mutunga, Judiciary chief of staff Duncan Okello and the registrar Gladys Shollei, the IEBC commissioners and staff, KEPSA officials, the Police Inspector General (IG) Mr Kimaiyo, religious leaders, constitutional commissions, councils of elders, civil society, media owners and editors.

We also held several meetings with the presidential candidates. Dr Ozonnia brought in resources from UNDP, booking Kofi Annan's Amani room for meetings. Paul Gondi was assigned to keep us connected to Raila Odinga and Joshua Kulei to keep us connected to Uhuru Kenyatta and William Ruto. Wilfred Kiboro was connected with both the Uhuru Kenyatta and Raila Odinga teams, so he also spoke to all and kept us informed. We had meetings with the other presidential candidates too, Martha Karua, Paul Muite and Prof James Ole Kiyiapi. We shuttled between meetings, reinforcing the peace message.

Meeting with President Museveni

We also reached out to the presidents of neighbouring countries. This included President Yoweri Museveni of Uganda. His country had been severely affected by 2007-2008 post-election violence. In addition to alerting him to our conflict prevention plans, we needed to hear what the EAC's contingency plans for Kenyan elections were. A meeting was quickly organised through the Uganda High Commission and we left for Uganda. Leading us was Lt. Gen. Opande (Rtd.). The others were Mr Wilfred Kiboro, Mr Paul Gondi, Mr Joshua Kulei, myself and Mr James Odong, a Ugandan working with UNDP in Kenya. Our agenda was to discuss options of ensuring non-violence in the elections. The President's security chiefs received us at the airport. At State House, the President received us in a room with sofa sets arranged in such a way that we, the visitors, faced each other across the room. The President sat in the centre alone facing us.

I had wondered what President Museveni's reaction to our mission would be. I was therefore surprised that he was on first name basis with everyone in the room except me. With Joshua Kulei; they talked about milk prices and cows; with General Opande, the President enquired into the military situation in the countries General Opande had worked.

With Paul Gondi, he spoke about banking. Turning to Wilfred Kiboro, he said with a hearty laugh, finally, we meet in peace. Apparently the two of them had several previous acrimonious meetings in the past over the shutting down of the *Daily Monitor* by the Ugandan State. The *Daily Monitor* was one of the newspapers under NMG's stable, which Mr Kiboro chaired. They also discussed Uganda Airlines, in which Mr Kiboro was a board member. He also remembered James Odong, his fellow countryman now working for UNDP in Kenya from a previous meeting, so I was the only one he had never met.

I was confident though. In addition to being an NCIC Commissioner, I was co-chair of Uwiano, the largest and most far reaching conflict prevention agency in Kenya. My confidence came from the level of information on conflict prevention that I had at my fingertips.

General Opande offered condolences to President Museveni, as his father had died a week earlier and for Deputy Prime Minister Eriya Kategaya too, who had died shortly after. The President told us his father gave him the name Museveni when he came back home in 1947, from the number 7, after World War II. General Opande explained why the group existed. The General has a way of sounding assertive without raising his voice. He said: "Mr President, we enjoy a particular niche as senior and influential citizens. We have come here to tell you that we intend to use that niche to avert crisis by mediating between the main presidential candidates in case there is a fall-out after the elections. Will you Mr President, support us in your capacity as chair of the East African Community, Inter-Governmental Authority on Development (IGAD) and International Conference on the Great Lakes Region (IGCLR)? Kenyans were surprised by the extent of the violence of 2007-2008. This time, we do not want surprises and must avert violence."

"Surprised?" The President responded.

"Why should Kenyans be surprised by the violence yet their leaders have been stoking ethnic divisions since independence in 1963? It all began with ethnic divisions by the colonialists, to make it easier for them to govern. Kenyans themselves picked up the mantle with the formation of the two parties, KANU and KADU. KANU was for the big ethnic communities; KADU was for the small ones. The language

of ‘tribe’ as a key point of mobilisation has existed since then. Kenyans have since then been openly pushing for ethnic political mobilisation.”

“The ‘tribe’ has not been the key-defining factor in Uganda, so it is a tragedy that it has been for Kenya as Kenyans are some of the most dynamic people in the world,” the President continued.

As President Museveni spoke, I remembered an article on traditional justice mechanisms that I had recently read written by someone called Latigo. Latigo had claimed that Uganda’s war in the North was ethnically motivated by politics. Was Latigo wrong? As if the President could read my mind, he called for a certain elderly lady to join us. She was from Northern Uganda. He asked her to tell us about the treatment of civilians, women and children by the Museveni-led National Resistance Movement (NRM) when they conquered Uganda. She obliged, telling us that the NRM had shocked them with their kindness. They expected brutality but were surprised that the NRM took care not to harm them.

After she had left, the President said that the other volatile issue beyond ‘tribe’ was land. Kenyans depended on land, yet the future of the country was in industries and technology. “It was most definitely not on land,” he said. “There are two big mistakes that Kenya has made,” President Museveni said. “Kenya has failed to define the legitimate interests of the people, show them that the country was bigger than the ‘tribe’. The second is the assumption that Kenya would always be an agricultural country. To avoid conflict, Kenyan leaders must fight for ideas and not ‘tribes’.”

“In the short term,” he continued, “in the forthcoming elections, the one who wins must be magnanimous. There was a terrible precedent set in Kenya in 2002 when Kenya stoned President Moi during the then incoming President Kibaki’s inauguration. Candidates must treat losers well and control their supporters from humiliating opponents. The loser, in turn, must accept loss. The winner must realise that although only some people in the country voted for him, he must be a President for all Kenyans. In the long term, the most important thing is guidance from the leaders. Kenyan leaders must not divide the people along ethnic lines. The fallacy of “tribe” must be destroyed through logic. It is amazing that Kenyan leaders do not realise how industrious their

citizens are. Kenyans are hardworking, but their leaders paralyse them. Leaders must stand up and represent something beyond 'tribe'."

President Museveni continued, "One of the things that surprised me a lot during the post-election violence of 2007-2008 was that Kenyans were unique; they attacked their own infrastructure, destroying buildings and railway lines. I was so surprised. How do you destroy that which you will need? In all this, I blame the leadership in Kenya for lack of ideology. Any of us who has had to go to war know that women and children should be spared. In Kenya, women and children were killed in 2007-2008. This is a direct result of lack of ideology.

As we move towards the elections, the following is important for the Presidential candidates; magnanimity, taking of all disputes to the courts and not to the streets, and ensuring that the elected President will not give support only to his people, as this will destabilise society. Three hours of discussion later, General Opande asked the President to call all the candidates and wish them luck and that we be granted leave to go. We promised to speak to President Museveni every three days and more often if the need arose.

It was now 4:00 am in the morning. The President left his seat and told us he would walk us to the gate. We walked slowly, no single guard in sight; the only sound that of croaking frogs. Stopping in the garden, he said: "You senior citizens are in a very privileged position to reach all candidates and influence Raila Odinga and Uhuru Kenyatta."

"This privilege," he said, "must be used to protect Kenya."

"As for you young lady," he said turning to me, "you are very lucky to be part of this. Learn as much as you can from these old people." I thanked him, saying that I knew I was lucky and that a conversation with the senior citizens always felt like reading a really good book.

"After the elections are over," he said, "I would like you to hold an international conference at which we shall discuss this thing called 'tribe'. Please invite me. I shall bring all the heads of state in the region. We shall discuss 'tribe' and leave Kenya with solutions." I almost told him that we had already discussed "tribe", countrywide in what we termed diversity conversations. We had a big conference too, dubbed the people's conference.

We had all the solutions on paper, but no politician was interested in them. Getting “tribe” out of the equation would demolish the career of many Kenyan politicians. As we landed in Nairobi at six o’clock in the morning, the nagging question was: how had we as Kenyans gotten ourselves into this situation of such uncertainty? Why did the election portend so much ill instead of hope? How had Kenyans been reduced to ending up in a foreign country, seeking stability?

When I got home, I looked for the article by Latigo. It began with the following statement.

Since independence in 1962, Uganda has been plagued by ethnically driven, politically manipulated violence referred to by some as a history of ‘cycles of revenge and mistrust’. Deep-rooted divisions and polarisations remain between different ethnic groups. (...) In the recent past all these have brought ethnicity to the fore in order to claim an ideological shape as a way of claiming to a constituency of support. Accusations of ethno-regional power grabs and confrontations have been rife, and are reflected in successive armed conflicts, the most devastating and enduring of which is the on-going conflict in Northern Uganda.”²⁷¹

The regional conference as suggested by President Museveni would be interesting, I thought. It could provoke the discussion in the region that we had tried, without much success. This was important for me on a personal level too. How could NCIC succeed in changing the politics of ethnicism, stop politicians from mobilising from an ethnic perspective?

Peace efforts countrywide

The country had erupted in a mad rush for peace. There was desperation in the way everyone talked about peace building. From FBOs, to schools, market women, CSOs, supermarket staff, politicians, everyone seemed to be involved in peace efforts. Even human rights and civil society organisations had programmes on peaceful elections. Duracoat, a paint company, had huge billboards advertising peace. Our peace building work was paying off. Surprisingly all the presidential candidates were supportive of these efforts. Even as the opinion poll placed Raila Odinga ahead of Uhuru Kenyatta by a 12 percentage point, it was not lost on our Uwiano planning team that the Jubilee team in particular was being very clever with their peace campaigns.

They were speaking to people's hearts, addressing the fears that people had in facing a fresh election. Newspaper headlines said it all:

Avoid inciting hate, Uhuru tells politicians – *The Standard*, Tuesday, 8th January 2013.

We have learnt from poll chaos, Uhuru tells Kericho rally – Saturday Nation, Saturday, 12th January 2013.

Uhuru and Ruto witness Kipsigis-Kisii peace pact – *The Star*, Tuesday, 22nd January 2013.

Uhuru and Ruto even co-authored opinion pieces in newspapers calling for peace. At the same time, our goodwill ambassadors were on a roll, promoting peace through public statements and newspaper articles. At night, I would lie awake, wondering whether all these peace efforts would yield fruit. The reality of victims and perpetrators living side by side continued to be with us. In the absence of punishment for perpetrators of violence, it was not possible to achieve meaningful peace.

The TJRC was yet to release its report, therefore the victims had seen no legal recognition of their plight. The victims wanted peace and justice, but the reality was that Kenya had yet to reach a level where the rule of law was respected as to guarantee peace and justice. It was not within our power as NCIC or Uwiano to guarantee justice. The criminal justice system had either been unable or unwilling to deliver justice for the victims.

The Tyranny of Numbers ²⁷²

Political scientist Mutahi Ngunyi opened a new line of debate a few weeks to the elections telling the country that a “tyranny of numbers”, which predicted the outcomes of the elections based on ethnic numbers, existed. The argument laid out the following hypothetical scenarios for the elections in a series of slides.

Slide 1: Historical facts:

Fact one: We vote as ethnic communities. Or have we changed?

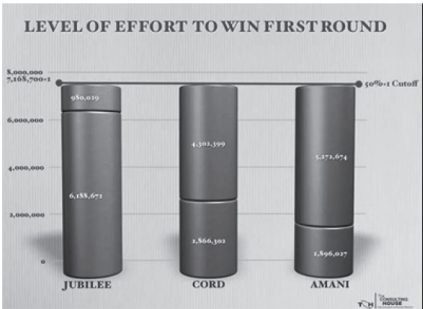
Fact two: This election was concluded and won on 18th December 2012 after the voter registration. Some people slept through the revolution as others schemed.

Slide 2: The IEBC facts, raw ethnic numbers – GEMA

In terms of raw ethnic numbers from the IEBC voter registration process, the GEMA (Kikuyu, Meru and Embu) voters had registered 4,356,161 people. The Kalenjin had registered 1,832,511 people. This brought the total Jubilee registered voters to 6,188, 672.

Slide 3: The IEBC facts, raw ethnic numbers – Cord

The registered Luo voters were 1,676,428. The Kamba registered voters were 1,069,529. Mutahi added the Turkana vote of 120,345 that he said, was for good measure. The charts below explain the next points.

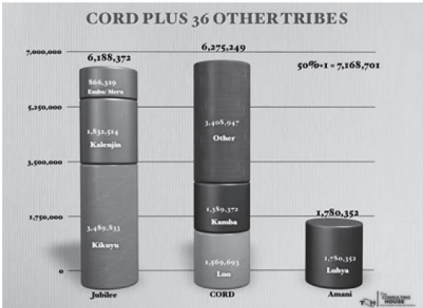


**The 50%+ 1
LEVEL OF EFFORT**

For Every 1 Vote Jubilee has to mobilise to reach 50%+1, CORD has to mobilise 4 Votes

The level of effort **ratio** is 1:4. This means that CORD has to work 4 times HARDER; spend 4 times MORE. For every 1 vote persuaded by Jubilee, CORD loses 4 votes in pursuit of the 50% +1 cut-off

What about the **SWING VOTE**? Lets add it to CORD in the next Bar Chart.



RUN-OFF SURPRISES

Fact One: The Run-off is most likely to be between Jubilee and CORD if it happens.

Fact Two: This presupposes a voter turn-out that is similar across board.

Fact Three: If the Swing vote is distributed equally amongst the coalitions, but voter turn-out is low for CORD, chances of Raila becoming number 3 exist as our next bar chart shows . And the trouble will arise from the Kamba voters!

COALITION OF 38 TRIBES

- If the Luos and Kambas are joined in CORD by all the other 36 or so tribes, can they make the 50%+1 cut-off?
- This is unlikely; the entire swing vote cannot go to CORD. But should it happen, the combined coalition of 38 tribes would only make 6.27 million votes compared to Jubilee's 6.18 or the required 7.17 million for the 50% + 1 cut-off.

Unsolicited Recommendations

1. Raila's Strategy should be to STOP Jubilee from winning first round; And to STOP Amani from Kicking CORD to 3rd Position ahead of the run-off.
2. ICC trials should be Differed until the two suspects are declared winners. With these scenarios, they AREN'T SHOWING UP at the HAGUE.
3. Those threatening SANCTIONS should start preparing the package. Seriously. They need to move from rhetoric to action. The tyranny of numbers will have no mercy!

Figure 31.1: Tyranny of numbers matrix

Mutahi Ngunyi was criticised for making assumptions that Cord and Amani would have no impact among the Kalenjin. Questions were raised about the effect of the cosmopolitan votes in Nairobi and other cities. Did Mutahi assume that even Kenyans in towns would vote ethnically? What about places like Nakuru town that were cosmopolitan? What about people who came from mixed ethnic parentage? What was not in any doubt was that nobody took Mutahi Ngunyi lightly. In fact, he was often referred to as the prophet, based on statements he had made about earlier electoral outcomes. At a very early stage in Narc's life, he had predicted a Raila Odinga and Mwai Kibaki fall-out at a time when it was unimaginable to imagine their not working together. The huge amount of criticism of his hypothesis that the Jubilee Alliance of Uhuru Kenyatta and William Ruto would win the 2013 presidential election pointed at how seriously he was taken. Meanwhile opinion polls consistently indicated that Raila would win.

Responding to Mutahi Ngunyi's tyranny of numbers argument, constitutional lawyer Wachira Maina[□] pointed out that numerous opinion polls had consistently placed the Cord coalition ahead of Jubilee, with the most recent poll saying that the election was now a virtual tie. The polls, Wachira argued; "Are saying in effect that no party can win this election in the first round and though Mutahi's argument has gained traction in certain circles, it is wrong-headed and the numbers on which it rests have been tortured to yield results they cannot sustain". Wachira continued; "Though the Tyranny of Numbers makes a plausible but trivial claim, that is, that Kenya's voting is historically influenced by ethnicity. The claim is plausible because identity is central to our national life – as it is in Belgium, Lebanon and any other multi-cultural country you may care to name. It is trivial because no one has ever won an election without mobilising at least three ethnic groups and so undercutting the argument that people vote ethnicity." Wachira said that Mutahi's arguments were based on errors or fallacies.

Wachira concluded as follows: All ethnic votes are movable to non-ethnic leaders. The only vote that so far has refused to move, even if partially, to non-ethnic candidates in all four multi-party elections is the Kikuyu vote. The fact that Uhuru and Ruto appear to start off with a large so-called "bankable vote" does not make it any easier for them to

mobilise the additional “small vote” they need to win the election in the first round; Opinion poll numbers are bankable, Mutahi’s numbers were not. To win an election in Kenya, incumbency always mattered. The Cord Principals held incumbency. Raila Odinga was Prime Minister, Kalonzo Musyoka was the Vice President and Moses Wetangula was the Minister for Foreign Affairs. Nobody can presume to know how the 3.5 million new voters will cast their ballots. Turnout trends since 1997 show that Mutahi’s turnout figures are therefore bogus.

The debate between Mutahi Ngunyi and Wachira Maina was closely followed mainly because not only were they were intellectual giants but also because it was very important to Kenyans that they were not speaking from an ethnic perspective. Both Mutahi Ngunyi and Wachira Maina are Kikuyu.

The Presidential debates

One of the factors that helped to reduce tension was the first Presidential debate aired live on eight television stations and 34 radio stations. The coverage also included international media outlets BBC, CNN, Reuters and Al-Jazeera. Google was streaming the debate live as so was the Nation Media Group on its website. The leaders made statements on the issues of ethnicism and peaceful elections. Excerpts:

Paul Muite: Ethnicity poses a major challenge to our politics today.

Peter Kenneth: We need to look Kenyans in the eye and tell the truth. We must break the historical bondage we have been tied to for the last 50 years.

Martha Karua: I look forward to the day when any leader who makes speeches that incite ethnic communities against each other will be brought to book.

Raila and Uhuru were particularly quick to shrug off their ethnic differences in public.

Raila Odinga: I agree totally with my brother Uhuru. In fact we are the best of friends. In 2002, I said “Kibaki Tosha” and Kibaki is a Kikuyu. Now we want to see Kenyans make informed choices based on policies.

Uhuru Kenyatta: I have no differences with Raila, but we may differ on how to handle issues of this country.

Raila Odinga: People come together for a particular purpose. Cord is a coalition of the willing. In 2002, the Luo and Kikuyu came together to vote for Kibaki. Cord is a national movement and I have never talked about ethnicity. It is our rivals who are talking about ethnic figures. Cord stands for one Kenya, one nation.

Uhuru Kenyatta: We have focused on issues affecting our people. Despite our personal differences we have agreed to work together. I have not had a single rally in Central Province. We are conducting a national campaign.

Kenyans were probably hoping for too much that in their first public debate on the same podium together, Raila Odinga and Uhuru Kenyatta would speak honestly about the terrible bondage their fathers had placed the country and their ethnic communities in; the bondage of perpetual ethnic and political tension. There was no doubt to anyone watching the debates that this was it. This was the real show; the two, sons of Kenya's founding fathers, held the capacity to make or destroy Kenya. The moderators prodded the candidates, asking them to respond to the fact that the campaigns had taken the shape of mobilisation along ethnic blocs. It was not a question put to them; it was a statement.

Paul Muite: We need to accept that we are 42 ethnic groups in Kenya and there's nothing wrong with that. It is negative ethnicity that is the problem. This comes about because of poverty, corruption and impunity.

Raila Odinga: Ethnicity is the disease of the elite who are in competition for the resources of the country. We now have a legal framework to ensure equity in distribution of resources.

Martha Karua: Tribalism is a social and economic issue that affects all communities. We must own up as leaders and accept to deal with it. We must deliberately give more funds to areas that have hitherto been marginalised.

Musalia Mudavadi: Tribalism is real and it is serious. It comes from a sense of insecurity. People are always told that you must huddle to this one side for your interests to be served.

Peter Kenneth: Tribalism is what poor leadership has offered to Kenyans. It is something to do with poor and weak leadership. In my

plan, I have looked at equality so that never again will Kenyans feel unequal.

Uhuru Kenyatta: Tribalism has been a source of conflict. We saw the worst of this during the post-poll chaos in 2008. This has been largely because of fighting for resources.

Prof James Ole Kiyiapi: Kenyans are all equal and this country has enough for all of us. I do not have a reason to believe Kenyans hate each other that much. I want a government of inclusion with appointments done fairly and on merit.

The moderators, Julie Gichuru and Linus Kaikai asked the presidential candidates to specifically speak about the happenings in Tana River and pledge to ensure Kenya was peaceful during and after the elections, which they did.

The candidates responded to a request by a local Bishop David Owuor for what I had suggested in an opinion piece carried by the *Sunday Nation* a few weeks before; a “*Sorry Day*”. On 23rd February 2013, I passed through Uhuru Park on my way to Serena to meet General Opende and the other senior citizens. The huge number of crowds that thronged the roads walking to the park shocked me. They were going to prayers hosted by the Bishop; which he had labelled a national repentance day to which the Presidential candidates were invited. My mother called to tell me she was in the crowd. She had gone to pray for Kenya, she said. Seeing the candidates and in particular Raila Odinga and Uhuru Kenyatta pledge to accept the results publicly was historic. The country’s temperature went down and suddenly, all the tension we had felt was gone. Presidential aspirants were now on a roll, all of them running with the peace campaign. I tried to capture the county’s mood in another opinion piece, published in the *Sunday Nation* of 24th February 2013.

Meeting the Western Ambassadors

Lt. Gen. Opende (Rtd.) led our small group to meet the Western ambassadors at the Swedish Embassy. The perception that the foreign ambassadors were supporting Raila Odinga’s bid was particularly strong and with reason. The western embassies had declared that they did not support the election of people who had been indicted by the ICC. The

Sunday Nation of 12th May 2012 had a story headlined *Britain asserts that Ruto and Uhuru should be tried by ICC* stating that the British government had told Kenya it would not change its position about the ICC and that the cases had to run full course.

The US and European Ambassadors had issued a number of statements warning Kenyans not to elect candidates facing charges of crimes against humanity. They maintained they would only have “essential contact” with the ICC suspects.

US President Barack Obama issued a statement in which he declared: “The choice of who will lead Kenya is up to the Kenyan people (...) Kenya must reject intimidation and violence, and allow a free and fair vote. Kenyans must resolve disputes in the courts not in the streets... You can show the world that you are not just a member of a “tribe” or an ethnic group but citizens of a great and proud nation. I cannot imagine a better way to mark the 50th anniversary of Kenya’s independence.” The Jubilee team quickly called a press conference in which both Uhuru and Ruto spoke, saying that they were impressed with the US stand.

Two days later US Ambassador Johnnie Carson clarified that the statement did not mean that President Obama had endorsed the Jubilee candidates. He went ahead to make a statement that was to become one of the most quoted in Kenya, that “choices have consequences”. But this was rebutted by Jendayi Frazer, who had previously served as the Bush Jnr administration’s Assistant Secretary of State for African Affairs, who stated: “I am troubled by Johnnie Carson’s statement that is essentially meddling in Kenya’s election. It is very reckless and irresponsible, given that the [presidential] election is very close, for us to try and intervene in Kenya’s election decision. We should not be threatening Kenyans about their choice by pointing to an ICC case that is not proven. I think the ICC case against Uhuru Kenyatta is weak and based on hearsay”.

She categorised ICC as “a very manipulated institution, particularly by the West.” She pointed out that the USA was not a signatory to the treaty that established the ICC. She also poured cold water on the “essential contact” statement by pointing out that the USA had “kept up consistent contact with Sudanese President Omar al-Bashir since his

indictment by the ICC in 2008 on charges of war crimes.”²¹ Uhuru and Ruto responded in several forums that the foreign nations wanted to dictate to Kenyans whom they should choose as President and Deputy President. “Why don’t you just be brave and name your candidate?” They posited. The Jubilee campaign team often spoke of the West as seeking to sway Kenyans to favour an Odinga win.

Our meeting with the Western diplomats was therefore important.

Meetings with the presidential candidates

Our team continued keeping up regular contacts the presidential candidates. Three days to the election, President Kibaki addressed the nation and made a strong pitch for peaceful elections. If he had made this speech in 2007 it would probably have averted much of the violence. “This Monday,” President Kibaki said, “you as a voter have a date with destiny. By voting, you decide the leadership that will manage your hopes and aspirations. In casting your vote, you will be exercising your democratic right and taking your place in history.” He also called for peace and for candidates in the election to accept the outcome. “A peaceful vote is a vote for a secure, prosperous and stable Kenya”.

On Monday 4th February 2013, opinion polls conducted by all major pollsters in Kenya, Strategic research, Ipsos Synovate and Infotrak said that the race was narrowing between Raila Odinga and Uhuru Kenyatta with the gap varying between 0% and 4%. Raila Odinga was still ahead amid claims from his opponents that people from his ethnic community working for the pollsters manipulated the opinion poll results in his favour.

Election Day – 4th March 2013

I went to bed apprehensive about what the night would bring. We had done so much, but was it enough? Would we deliver a peaceful election? Kneeling on the side of my bed, I prayed for peace. At exactly half an hour past midnight I heard the phone beep. A text message had come in. I woke up, knowing deep down that this was it. Could our work be unravelling? The text message was from SK All was not well in Mombasa, he said. There was tension, residents were afraid

and the MRC had threatened to disrupt the voting. Police officers were all on high alert and patrols had been intensified. By morning our worst fears were proved right. Some MRC members had allegedly waylaid policemen in a shoot-out that left 12 people, including police officers, dead. Among them was the Changamwe Officer Commanding Police Division (OCPD) and the Officer Commanding Station (OCS). Another disturbing piece of information was that the MRC had raided a polling station in Kilifi, killing one IEBC staff member.

Martin Luther King writing from a Birmingham jail in 1963 at the height of the American civil rights movement had said: “We can never be satisfied as long as a Negro in Mississippi cannot vote and a Negro in New York believes he has nothing for which to vote.”²⁷⁵ The message was that African Americans who could vote believed voting was inconsequential. This is the same message the MRC had wanted to express.

I scrolled through Uwiano messages. All seemed to be okay in the rest of the country. I set out to vote at 6.30 am. Little did I know that there had been a commotion at my voting station, St Monica’s Church in Kitengela, where voters had pulled down the gate because it had not opened at 6 am as envisaged. I soon got an SMS alert from Uwiano advising me of the incident. By eight I called up Mr Kiboro, General Opande and Mr Kulei and SK; all confirmed they had voted. By the time I voted, the biometric voter machine had broken down at my station. I called Ahmed Issack Hassan and told him of the incident. He said the problem of the voter machine breakdown was happening all over the country and he was putting out a press statement to reassure Kenyans that everything was under control. A few minutes later I watched him on television doing exactly that. Uwiano had set up a tent at the Bomas of Kenya, where the votes were to be tallied. Again, as happened during the referendum, many people came to check on the conflict status of the country at the Uwiano tent.

5th March 2013

On 9th March 2013, Uhuru Kenyatta was declared the President-elect of Kenya by the IEBC. With this declaration, the life of the KNDR, which was supposed to hold Kenya together from 2008 to the date

when there would be a new election, came to an end. The results of the Presidential election, based on valid votes given by the IEBC were as follows.

Candidates name	Votes	Percentage
Paul Kibugi Muite	12,580	0.10
James Legilisho Ole Kiyapi	40,998	0.34
Martha Wangari Karua	43,881	0.36
Mohammed Abduba Dida	52,848	0.43
Peter Kenneth	72,786	0.60
Raila Odinga	5,340, 546	43.70
Uhuru Kenyatta	6,173,433	50.51

Raila Odinga challenged the IEBC declaration in the Supreme Court of Kenya. The other elections had gone on well and Senators, MPs, County Governors and their deputies, Women Representatives and MCAs were all sworn in as the case against Uhuru Kenyatta's election as President was going on. The petition challenging the results was dismissed on 30th March 2013 and judgment given in favour of Uhuru Kenyatta.

Chapter 32

Kenya after 2013 Vote: Which way, Ethnicism?

The Commission shall promote equal access and enjoyment by persons of all ethnic communities and racial groups to public or other services and facilities provided by the Government.

– National Cohesion and Integration Act No. 12 of 2008, 25 (2) (f)

The country was uneasy after the 2013 elections. The collective national interest for peace had triumphed, some said, at the expense of justice and there was, in comparison with other election years, particularly 2007-08, very minimal violence. Kenya had survived a five-year coalition that bickered a lot but also came through for the country when necessary. The country had had five years without a legitimate legislative opposition party as a counter balance to the executive since everyone was in the coalition government. How would the country handle devolution? How, would strong personalities like Raila Odinga, Martha Karua, Musalia Mudavadi and Kalonzo Musyoka operate outside government? Would the former opposition leaders be able to mobilise and keep the Jubilee government in check?

The power sharing created through the Kofi Annan Accord had set the pace for strong institutions. The Kibaki/Odinga cabinet kept each other under check. With two principals it had been easier for the Agenda 4 institutions to flourish as each side of government tried to be in the good books of the commissions and the country. But now we were back to the era of one person being in charge of the country. How would the new government work?

It was time to take stock. Many in the human rights world were in shock, with some contemplating relocating from the country rather than be governed by two people indicted by the ICC. Peace crusaders, however, felt fairly accomplished. Uhuru and Ruto were riding high

as President and Deputy having won a clear mandate. However, their looming trials posed a clear diplomatic problem.

Nakuru, for the first time in five elections since 1992, had a peaceful election in which nobody was killed or displaced largely due to the Nakuru County Accord. The elders maintained and implemented the plans in the framework for inter-ethnic meetings. People had enjoyed the dividends that come with peace. There was need to follow through on the implementation to ensure lasting peace.

After the 2007-2008-post election violence, Kenya had been grouped among countries facing a democratic regression. But the establishment of the Agenda 4 Commissions brought many reforms, among them a new Constitution.

The Constitution had addressed some of the conflict drivers such as weak institutions. However, impunity and the structural reasons behind ethnic tensions that included socio-economic inequality and land grievances had not been successfully addressed. Implementing devolution would be the new government's key test. There was a danger that the new counties would, taking the bad ethnic manners of the country, become ethnic fiefdoms excluding the minorities. Yet the expectations were clear on the way forward. A *Daily Nation* editorial summarised it all:

“The incoming president has a great deal of work to do. The first duty will be to foster national healing and cohesion. Results so far show that the country is still divided and the people in need of reconciliation.”

The election had revealed that however celebrated the Agenda 4 Commissions were, many candidates had clearly mobilised along ethnic lines and divided the populace. The key question facing the country from a cohesion perspective was an examination of the country's democracy after the election (annex 10). How would the counties that had fared well in negotiated democracy work? In a sense, in April 2013, we were back to the independence period of 1963. We had institutions that were as ethnically divided as if we had never lived together as a nation. Civil society was also ethnically divided. Ethnic communities that were collaborating were doing so for political convenience. If their political leaders fell out, so would the ethnic masses following them.

With this uneasy peace, anything was capable of sparking off differences. The first fight was between the national and the new county governments. The governors began a raucous noise for control of the counties, trying to wrestle the powers from the former Provincial Administration that represented the national government on the ground.

There appeared to be a conflict between the national and county governments regarding devolved structures that nobody was speaking to. NCIC sought to fill this gap. I was assigned Nakuru and Nyandarua to broker peace between the County representatives and the representatives of the national government.

* * *

On 23rd April 2013, President Uhuru Kenyatta named the first batch of cabinet secretary nominees. Among them were people I knew well; Hassan Wario from the National Museums of Kenya whom I had been working with on the travelling theatre. Amina Mohammed, former PS in the MoJNCCA and NCIC goodwill ambassador, and Davis Chirchir who had been one of the IIEC Commissioners. He named a second batch later.

It was in this period that Mutula Kilonzo, who had been so supportive of NCIC as Minister for Justice, National Cohesion and Constitutional Affairs, and whom I had worked so closely with as Minister for Education died. Mutula had been elected as a Senator on a CORD ticket and we were all looking forward to the contributions of his brilliant mind in the new house. His death was shrouded in mystery and clouded with suspicion even after a team of pathologists flown in from Britain by his family said that the results of the cause of his death would be released after six weeks.

In the subsequent appointments, by the President and the Deputy President, there were significant differences such as the replacement of the Chief of Defence Forces (CDF), the highest-ranking military officer, a Kikuyu with General Samson Mwathethe from the Coast. In time however, several appointments to parastatals would go to the Kikuyu and Kalenjin elites, sparking dissent that the two communities were dominating the government and excluding others. The President

and the Deputy President seemed to be stuck between a rock and a hard place. On the one hand, they had to reward their supporters, many of them from their ethnic communities with positions. On the other hand, they had to be the leaders of even those who had not elected them and appoint people from across all ethnic and racial communities in Kenya.

The complaints against Kikuyu and Kalenjin would begin as a mutter and become the organising question for the opposition in the 2017 elections, much in the same way the ICC had been the organising question for the 2013 elections. The fact that only the Kikuyu and Kalenjin communities have held the Presidency since independence would continue to fuel ethnicist feelings because the general public still views holders of public office as the gatekeepers of resources to their ethnic communities. This creates a *siege mentality* among the ordinary Kikuyu and Kalenjin that in turn leads to reactions against other communities and perpetuates the cycle of negativity. This hurts mainly the poor as class insulates the rich from ethnic divisions.

I hoped that the cure for ethnicism lay in devolution and the Equalisation Fund which would be evident in the fullness of time.



Cartoon – our community is finished

Release of the TJRC report

The TJRC released its report in May 2013. It had made bold recommendations on prosecution of high-level government officers and politicians, reparation for victims of historical injustices as well as recovery of illegally acquired land. The report also demanded a public apology to all victims of torture and acknowledgement of the complicity of the state for their suffering throughout the Jomo Kenyatta, Daniel Moi and Mwai Kibaki regimes. The report had a list of people adversely mentioned and read like a list of who-is-who in Kenya. There were immediate reactions with many saying they had not been given an opportunity to defend themselves, though the report stated invitations had been sent out. The report had a chapter on ethnic tension that documented the main causes and effects of ethnic tensions in Kenya. The TJRC;

“Traced the roots of Kenya’s ethnic tensions to the divide and rule policies of the colonial administration in order to consolidate their hold on Kenya and to lessen the possibility that the African population would resist colonial rule. To that end, they magnified the differences between the various communities and regions, and stereotyped each community in a manner that would sow suspicion, hatred and create a sense of “otherness”. Secondly, the colonial government created ethnically defined administrative boundaries. In determining such boundaries, little serious thought if any was given to historical ethnic interactions and relations. Thirdly, the colonial government focused on developing infrastructure and social services in productive areas of the country (the so called ‘white highlands’) at the expense of the rest of the country. The resulting inequality remained largely unaddressed in the policies and practices of independent Kenya. The preferential treatment given to some areas of the country because of their clear productivity thus led to differential treatment of ethnic communities that were patterned around the ethnic enclaves created by the colonial government. Fourthly, the colonial land policy, particularly in the so-called “white highlands” contributed enormously to regional and ethnic marginalisation of the economy. Colonial land policies resulted in displacement, the creation of ‘native reserves’ as well as the movement of masses of people from areas of their habitual residence to completely different regions

and settling them on lands that traditionally belonged to other communities.

Thus Kenya entered the era of independence with a heightened sense of ethnicity that continued to divide rather than unite the country. However, the ruling elite in independent Kenya did not have the political will or commitment to create a truly democratic or prosperous Kenya for all its citizens. The result was the worsening of ethnic relations such that by 2007, long standing grievances erupted into unprecedented violence. In the post-independence period, causes of ethnic tension include the following.

- **Insider/Outsider dynamics:** Ethnic tension and violence occur when communities assert a superior claim over a territory at the expense of or to the exclusion of others. Such superior claims are based on the assumption that ownership or occupation at some point in the past created an exclusive claim for such ownership or occupation in the present. Such exclusive claims to territory inevitably create classes of 'insiders' and 'outsiders'. This perception of people as outsiders as opposed to fellow citizens often leads to increased tension based on ethnicity, which, in turn creates the potential for ethnic violence.
- **Of names and their meaning:** In Coast and Rift Valley alike, a prickly issue that is intricately tied to the notion of insiders and outsiders, relates to names of places. In particular, local communities in these two regions are aggrieved that places occupied by those they consider outsiders have been given 'outside names'.
- **State sanctions of outside/insider notions:** The designation of a community as 'other' or as an outsider has sometimes found support in state policy. In the Northern region of the country, particularly in those areas that made up the former North Eastern province the government has institutionalised the disparate treatment of Kenyans based on ethnicity by requiring that Kenyans of Somali origin carry a special pass.
- **Negative perceptions and stereotypes:** While the colonial government played an important role in cultivating ethnic stereotypes, the Commission also received evidence that some

stereotypes are drawn from and driven by traditional cultural beliefs and practices. For instance, the Commission heard that men from communities that do not practice male circumcision have always been stigmatised and regarded as lesser or weaker men, and therefore incapable of or unsuitable to take political leadership in the country.

- **Ethnicity and access to public office:** The perception that ethnic representation in government results in direct economic and other benefits to the represented community is pervasive in Kenya. While the commission acquired evidence that such benefits do not necessarily accrue to those communities who are represented, even in the highest offices of the land – the perception that they do leads to intensive competition for such representation and thus increases likelihood of violence during elections.”

However, the report was marred by the release of a parallel dissenting report from the foreign commissioners regarding the section on land, which they alleged had been edited from the original. By and large, the report made a serious attempt to dissect Kenya’s problems since independence and made recommendations to deal with some of the pending issues such as land, reparation and mitigating historical injustices.

Report on Tana Delta Clashes

On Wednesday, 23rd May 2013, President Uhuru Kenyatta received the report from the Judicial Commission on Inquiry into ethnic violence in Tana Delta district from Lady Justice Grace Nzioka. The Tana River report blamed conflict over resources such as water, land ownership disputes, slow process of land adjudication, politics and fear of marginalisation and influx of livestock, as the cause of the conflict in Tana River.²⁷⁶

The Judicial Commission established that the violence was properly planned, organised and effectively executed. The report confirmed Uwiano’s view that security agencies had failed to forestall the violence as police officers were “totally ineffective in the face of the violence. They completely failed to act on intelligence reports received, or any

of the reported criminal activities. There was no deliberate effort to enforce the law at all. They were ill-prepared to control the violence and were soon overwhelmed when it occurred to the extent that they lost some of their own". The report confirmed that many of the early warning reports that the law enforcers had received were from the Uwiano DPCs.

The Commission recommended development projects, land adjudication in the county, traditional dispute resolution mechanisms, rules on movement of livestock and beefing up security in the region.

As September 2013 approached and our extended terms as Commissioners drew to an end, I increasingly asked myself whether NCIC had failed or my dreams had just been deferred.

On 5th August 2013, Prof Anyang' Nyong'o, the ODM Secretary General wrote in his regular *Sunday Nation* column that NCIC had failed to tame Kenya's big problem of ethnicity, labelling it the elephant in the room. He gave examples of countries like Singapore and Malaysia that had been able to come up with policies that battled the racial problems and wondered why NCIC had not done the same. I called him and told him how wrong he was about us. We had developed policies. In his next Sunday column, he wrote about our conversation and corrected the impression that NCIC had failed, which I quote partly below.

"(...) On reading the same article Alice Nderitu of the National Cohesion and Integration Commission (NCIC) called me to appreciate what she read but also to draw my attention to a major policy document the Commission produced this year entitled "Kenya Ethnic and Race Relations Framework." I went through this document carefully and discovered that it deals with the issues bothering Cheruiyot while going further to propose what needs to be done urgently to promote national cohesion and integration in Kenya. In this regard multiculturalism, ethnic and racial tolerance, ethnic and racial inclusion in all spheres of national life and acceptance of diversity must be the basic principles for promoting national cohesion at the individual and societal levels. But, as Cheruiyot points out, Kenya needs a government committed to implementing the ideals of national cohesion and integration if we are to transit from mere wishes to real change in our lifetime.

By the very nature of our upbringing as former colonial subjects we have been prone to learn and practice bad manners regarding our attitudes to others who are not part of our ethnic community. Precisely because the colonialists integrated us into the colonial political economy differentially as

Luhya, Kikuyu, Luo, Mijikenda, Kisii, Njemps, Ndorobo, Kalenjin and so on, we should not have retained, reproduced and perpetuated this state of affairs way into our post-colonial life. But we did and we continue to, hence the pent up resentments that frequently burst into inter-ethnic conflicts in our society from time to time.

The NCIC therefore proposes that we must make a break with our colonial past and our post-colonial perpetuation of the inequalities, prejudices and iniquities from this past by embracing its ‘Framework for ethnic and race relations in Kenya.’ It observes from the start that the Constitution that we promulgated on 27th August 2010, provides us with a tremendous opportunity to do this since it provides a much more enlightened and progressive framework for creating a more inclusive, tolerant and multicultural nation. What are the steps to be taken in doing this?

First, the Commission itself must live up to its stated objective of ‘facilitating and promoting equality of opportunity, good relations, harmony and peaceful coexistence between persons of the different ethnic and racial communities in Kenya, and advising the government on all aspects thereof.’

Second, the NCIC is of the opinion that building a positive and integrative legal framework over time is important in laying the foundation on which change will be built to promote national cohesion and integration. In this regard the constitution is a major milestone in the march forward. It is reinforced by many other international laws and conventions which we have domesticated and which no doubt compel our government and people to accept certain universal values governing individual and people’s rights and behaviour as part of the global community of civilised nations.

Thus any form of ethnic, racial, gender, age or religious discrimination should not find a place in social, economic and political life in Kenya today. Education, for example, should be accessible to all Kenyans and should aim at giving every individual the opportunity for self-improvement and development. But given the fact that in the past certain communities in certain spheres of life have enjoyed undue advantage over others due to their proximity to state power, adjustments need to be consciously undertaken to eliminate the gaps created by historically conditioned discrimination adversely affecting certain communities.

Third, in order to eliminate such gaps created through our past history, facts need to be dispassionately ventilated and objectively dealt with through well-knit public policies and well-developed implementation strategies. Kenyans should not live in denial but should be innovative and proactive.

In summary, all sectors of the Kenyan society need to develop and implement ethnic and race relations policies in line with this Framework established by

the Commission. Every year, all institutions concerned will publish reports on their own experiences and achievements that the Commission can audit before they are tabled in Parliament or in County Assemblies as the case may be. Procedures to be followed will be worked out by the Commission and approved by Parliament."

Prof Nyong'o's article served as a good ending to my tenure at the Commission. For the four years that I served at NCIC, I had interacted and addressed several meetings ranging from market women to high-end international conferences. What I had learnt in all this was that Kenyans were willing to engage and seek solutions to ethnicism. The thought that people could now discuss ethnicism in public was good enough for me. The era of pretending that Kenya had no ethnic differences was past.

The Westgate Attack, Garissa and other Al-Shabaab attacks

On 19th June 2013, the Al-Shabaab violence hit my family. On that day, a vehicle rigged with explosives was detonated outside the gate of the United Nations compound in Mogadishu. Attackers then entered on foot as staff tried to hide. Among those panicking staff was my sister-in-law, Rita Wairimu Muchucha. Rita was UNDP's operations manager in Somalia. Just a few months earlier, Rita had been received at the airport by her Somali colleagues with a banner that welcomed her as the first UNDP staff to go back to Somalia. The gunmen shot and killed Rita, three of her colleagues, two South Africans, Morne Lotter and Alan Simpson, and one Somali Isak Mohammed Osmani. They also killed four Somali security officers who were defending the compound. Thirteen other people were killed, including six Somali civilians and seven Al-Shabaab attackers.

Her death devastated my family in a way that could not be calmed by the UN flag flying at half-mast in her honour. The UN Secretary General Ban Ki-Moon sent personal condolences referring to Rita as a "kind, dedicated and effective colleague". The following year, US Secretary of State John Kerry paid tribute to Rita. Because her death happened in Somalia, local news agencies did not find the attacks worth more than a paragraph. Little did we know that Al-Shabaab would soon hit Kenya in a big way.

The day 21st September 2013 was the International Day of Peace. Despite the fact that I had left NCIC, I had continued with my peace building work with Jane Anyango and the *Wamama Tuna Uwezo* (*Women are able*) group. My sister Wakonyo Nyingi and I joined the *Wamama Tuna Uwezo* early in the morning in a game of volleyball bringing together old and new members of the inter-ethnic group of Kibera women. I left them to go to the National Museum of Kenya where the Story Moja festival was taking place. I was scheduled to speak in a panel chaired by journalist Tom Maliti on ethnicity. Unknown to me, at the exact time when our panel discussion began, the Al-Shabaab had attacked Westgate Mall.

By the time the terrorists were done, 67 people lay dead, 175 wounded and property worth billions of shillings was destroyed. The numbers did not take into account those who suffered trauma and non-physical injuries. Kenya had a history of terrorist attacks but nothing compared to this. In December 1980, terrorists had bombed the Norfolk Hotel, in August 1998 the American Embassy had been bombed, in November 2002 there had been the simultaneous bombing of a resort popular with Israeli tourists and a missile attack on an Israeli plane at the Moi Airport in Mombasa.

The attackers made no secret that they were attacking the mall to send the message that they wanted the KDF out of Somalia where they are involved in an exercise called *Operation Linda Nchi*. Prior to the Westgate attack, Al-Shabaab had mounted several abductions and murders of tourists and exploded grenades in many places across the country.

The following day I left for Nigeria where I had begun working in Jos, Plateau State with the organisation we had partnered with in the Nakuru Peace Process, the HD Centre tasked with ensuring women's inclusion at all levels of the peace process dubbed the Inter-communal Dialogues and Conflict Mediation, that closely mirrored the Nakuru process. The peace effort extended to Jos South, Barkin Ladi and Riyom Local Government Authorities (LGAs). The Nigerian negotiating teams were particularly fascinated by how similar their conflict was to Kenya's Rift Valley. The root causes were very similar; land, which ethnic community settled in Plateau first, pastoralists

versus agriculturalists' lifestyles, the legacies of colonialism. The only complicating factor that differentiated the two conflicts was the issue of religion in Nigeria.

Later on, in 2014, I would become HD's lead mediator in the neighbouring State of Kaduna, leading a dialogue process between 29 ethnic communities that resulted in the Kafanchan Peace Declaration. In 2016, I would proceed to, again as lead mediator, broker the Southern Plateau Peace Declaration, between 56 ethnic communities. We had to sign the peace agreement in a football stadium to accommodate the large numbers.

On this particular day after the Westgate attack, I took particular comfort on this flight on Kenya Airways just by watching the airplane wing with the colours of the Kenyan flag slicing through the clouds. You shall not bring Kenya down, I said to the terrorists in my heart. Kenya is a country destined for greatness. You shall not take that away from us. On arrival in Nigeria, the Westgate story was the top story in all the newspapers. The immigration officers on seeing my Kenyan passport said 'sorry, my sister'. The negotiating teams at the peace forum in Jos signed off on a document commiserating with Kenyans. At home, Kenyans forgot their ethnic differences, rushed to Westgate to save people and spent hours in queues to donate blood. They were united in adversity. That moment clearly defined a Kenya for all Kenyans.

ICC terminates Case against Uhuru and Ruto

An opinion poll conducted by Ipsos Synovate had indicated that support for the ICC had declined from 68% in 2010 to 56% in 2011 to 49% in February and 39% in July 2013. On Friday 13th March 2015, the ICC terminated the crimes against humanity case against Uhuru Kenyatta. Judges Kuniko Ozaki, Robert Fremr and Geoffrey Henderson ruled: "Noting the Prosecutions withdrawal of charges against Mr Kenyatta, the Chamber decided to terminate the proceedings in this case and to vacate summons to appear against him". On 5th April 2016, the Trial Chamber decided, by majority that the cases against Deputy President William Samoei Ruto and radio broadcaster Joshua arap Sang should be terminated.²⁷⁷

The President's Apology

On 26th March 2015, President Uhuru Kenyatta, in keeping with the TJRC recommendations, apologised for the atrocities that were committed under previous governments. He was speaking in Parliament during his State of the Nation address. There was precedence to this apology. On 13th February 2008, Kevin Rudd had become the first Australian Prime Minister to publicly apologise to the Stolen Generations, Indigenous Australians, on behalf of the Australian Federal Government.

President Uhuru Kenyatta apologised for the 2008 post-election violence, the Wagalla massacre, the Nyayo House torture chambers and the unresolved assassinations of people such as Tom Mboya. He also said he had received a report from the Director of Public Prosecutions that said the majority of the post-election violence cases could not be successfully prosecuted. He said further that a Ksh. 10 billion restorative justice fund would be set up for reparations.

To this date, we are still plagued by all actions that have at times failed to recognise the civil and human rights of Kenya's citizens. These have shaken the nation, excluded some Kenyans from the full promise of citizenship, and fractured our national fabric. (...) In many ways, Kenyans and humanity overall, have benefited from restorative justice, an approach that is deeply rooted in our cultural and historical realities, particularly when such conflicts have a communal and political dimension. My administration was forged from this reconciliation. (...) There are challenges to obtaining successful prosecutions. These challenges range from inadequate evidence, inability to identify perpetrators, witnesses' fear of reprisals, and the general lack of technical and forensic capacity at the time. Nonetheless, the DPP recommends that these cases be dealt with using restorative approaches.

The rest of the TJRC report, the President said, was to be implemented without delay. The reparations fund was to be implanted through the NCIC.

Obama's visit to Kenya

On 25th July 2015, Barack Obama became the first sitting US President to visit Kenya. He is much loved and considered a local son. Kenyans

had long hoped he would come and when he did, the headlines in newspapers did not speak of his visit but his homecoming. The excitement in the country was palpable. Without any prompting, Kenyans rallied around each other, setting aside ethnic differences to welcome President Obama. It is difficult to explain the emotions that Obama evokes in Kenyans. He electrified the country as Kenyans followed his every move. He had previously come to Kenya in 2006 when he was a US Senator.

President Obama, famous for among many other things, the ability to give great and moving speeches, lifted our spirits and did not disappoint. The speeches he made spoke to the history and hopes of Kenya. One particularly moving speech was at the Moi International Sports Centre, Kasarani, in which he spoke about our ethnic differences and the post-election violence of 2007/08 that had propelled me to work towards cohesion and integration in Kenya:

Tragically, just a decade ago, Kenya was nearly torn apart by violence at the same time that I was running for my first campaign for President. And I remember hearing the reports of thousands of innocent people being killed or driven from their homes. And from a distance, it seemed like the Kenya that I knew... a Kenya that was able to reach beyond ethnic and tribal lines... that it might split apart across those lines of tribe and ethnicity (...) But look what happened. The people of Kenya chose not to be defined by the hatreds of the past...you chose a better history. (Applause) The voices of ordinary people, and political leaders and civil society did not eliminate all these divisions, but you addressed the divisions and differences peacefully. And a new Constitution was put in place, declaring, "every person has inherent dignity... and the right to have that dignity respected and protected." A competitive election went forward...not without problems, but without the violence so many had feared. In other words, Kenyans chose to stay together. You chose the path of Harambee. (...) Old tribal divisions and ethnic divisions can still be stirred up. I want to be very clear here... a politics that's based solely on tribe and ethnicity is a politics that's doomed to tear a country apart. (Applause) It is a failure ... a

failure of imagination. (...) In the United States, we embrace the motto, E Pluribus Unum. In Latin, that means, out of many, one. In Kenya, Harambee ... we are in this together. Whatever the challenge, you will be stronger if you face it not as Christians or Muslims, Maasai, Kikuyu, Luo or any other tribe... but as Kenyans. And ultimately, that unity is the source of strength that will empower you to seize this moment of promise.

Had his speech and our three days of peaceful coexistence made a difference? Kwamchetsi Makokha, a *Saturday Nation* satire columnist and the media consultant who had assisted NCIC on the ethnic audit posted on face book; “*Mgeni ashaenda*” (The visitor has left) Back to our “tribal existences.” Was Kwamchetsi right? It would take more than a visit from President Obama to wipe out our ethnicism but did not the fact that we were able to rally around each when we were attacked at Westgate or when our favourite son came home stand for something? Did that then not mean that we had the capacity to rise above our hate? Did that not mean that when it counted, my country, a nation called Kenya with Kenyans existed?

Pope Francis Visits Kenya

President Obama’s visit was followed closely by Pope Francis who visited Kenya from Wednesday, 25th to Friday, 27th November 2015. It was the Pope’s first visit to Kenya and the continent of Africa. He too urged Kenyans to work at co-existing saying “recent events around the world have indeed taught us that we must do even more to bring unity and understanding between faiths, between ethnicities, between races but also between nations”

* * *

Several other Heads of State visited Kenya including Muhammadu Buhari of Nigeria, Abdel Fattah el-Sisi of Egypt, Park Geun Hye of South Korea, and United Kingdom’s David Cameron among many others. The visits plus a flurry of international conferences were crowned by an address by Uhuru Kenyatta in May 2017 to the G7, consisting of the most powerful countries in the world; the US, France, Germany, Canada, the United Kingdom, Japan and Italy. Clearly the

West had changed its mind as regards to working with Uhuru Kenyatta and his Government. Uhuru became Kenya's first Head of State to address the G7. Other African leaders who had addressed the G7 were President's Thabo Mbeki of South Africa and President Olusegun Obasanjo of Nigeria.

Kenya's economy in 2015 was then worth US\$63.40 billion, the biggest in the East African region. With all this international attention, the elephant in the room back home for Uhuru Kenyatta continued to be the deep ethnic and racial divisions that plague Kenya.

Measures in ending ethnicism

In addition to the foundation for national cohesion as set out in the Constitution 2010, and the National Cohesion and Integration Act, 2008, and the Ethnic and Race Relations policy among other laws in Kenya, I reckon that to achieve cohesion and integration, all Kenyans of goodwill – as a minimum – should actively take part in or support the following measures summarised below, which are critical and thus deserve special mention in helping us, as a nation, attain the Kenya

(a) Education and the youth

The youth bulge in Africa is a very significant consideration. The youth in Kenya are one of the most important, if not essential, change agents. Statistics on Kenya's population indicate that the youth are the majority and by a huge margin. The population of Kenya in 2015 was estimated at 45,925,301. The age distribution is as follows: 0-14 years, 41.56% (19.1 million); 15-24 years, 18.66% (8.6 million); 25-54 years, 33.17% (15.2 million); 55- 64 years, 3.76% (1.7 million) and, 65 years and above 2.85% (1.3 million).

The median age is 19.1 years. Almost 23 million Kenyans (half the population) are under 20 years of age. Over 60% of the population is 24 years of age or younger. Over 19 million Kenyans (41.56% of the total population) are very young and in Secondary School (Form 2 or a lower class). These mind boggling statistics point to the urgent need for Kenya to consciously implement an educational system that produces Kenyans and not ethnic nationalists; tolerant individuals who are accepting of diversity. This is because education can be a means to

retain as well as eliminate intolerance, inequality and prejudice. This must walk in tandem with ending inequalities between students from all parts of Kenya.

The youth are young at heart and have open minds, free of entrenched prejudices, unlike many adults, their parents included. Building a generation of Kenyans who can rise up above ethnicism is crucial. Education is central to the acquisition of skills and knowledge, increasing the capacity of young people to contribute to the development of the nation and also their potential for personal development. Education is also a primary channel through which a particular set of identity, set of values, and a worldview are transmitted. The formal system of education is therefore a powerful avenue for promoting social cohesion and peaceful coexistence among ethnic and racial communities.

Education can be used negatively, as happened in Apartheid South Africa, to undermine social cohesion, creating or reinforcing social divisions and patterns of exclusion. Education can also be used positively as happened in Ghana, where;

“the colonial education system and civil service had the unanticipated consequence of bringing persons from diverse ethno-cultural backgrounds together, especially in urban areas and forging new networks of friendship (...) that occasionally transcended the strength of ethnic ties and other primordial loyalties and, as a corollary, created a sense of nationhood, even under colonialism.” After independence, the Nkrumah led Government “put in place affirmative action policies that included establishment of boarding schools, fair and equitable distribution of scholarship across the country, and multi-ethnic appointments”. Ghana has had its fair share of inter-ethnic difficulties “that frustrate and complicate the process of building a formidable nation out of the many distinct ethno-cultural groupings. Yet tensions in ethnic relations in Ghana have been sufficiently well contained and well managed. The country continues to pursue with zeal, even if at present lopsidedly; the agenda of nation building (...) Despite these major deficits in national integration, democratisation and nation-building, the centrifugal forces of ethnic diversity have not been allowed to degenerate into full scale armed conflicts.”²⁷⁸

The situation of ethnicism in Kenya is dire and requires quick action as the cases of Moi University and Kyogong Secondary School demonstrates. Moi University was closed on 13th July 2015 because of ethnic politics between the students that turned violent, completely paralyzing the entire institution.²⁷⁹ Kyogong Secondary School in Bomet was closed on 20th July 2015 because students from the Kalenjin and Maasai community attacked each other. Their problem had festered for long and was manifested in deep divisions that included separate sleeping arrangements in the dormitories. The school administration was also accused of favouritism towards one of the ethnic communities. One of the students said, “We appeal to the government to help us. ‘Tribalism’ at this early stage is not good.”²⁸⁰

Kenyan youth need to know another world, other than the one they live in, so as to open themselves to new places and new people. They will fit in by embracing the “other-ness” of others. This needs to be done when they are very young, as soon as they join school. The education system in Kenya can make this happen through;

- i. Enhancing the nationwide use of the same curriculum and textbooks, which teach the same values, history and culture.
- ii. Teaching the history of all ethnic groups. Injustices absent from history books have consequences for ethnic and racial relations that include reducing the ability of communities to understand or empathise with one another. In post-conflict situations, the way history is taught has the potential to promote tolerance and understanding.
- iii. Mixing of various ethnic groups in schools can provide on-going opportunities for children to connect, become more adaptive to multi-cultural settings and relate well with all ethnic groups. If a student thinks she/he is very good in maths and science and someone from an ethnic group they look down upon consistently performs better than them, then they are forced to re-evaluate their sense of superiority or of that person’s inferiority.
- iv. Holding annual national debates, national essay competitions and supporting the national drama festival on ethnicity, race, cohesion and integration themes will allow young people to carefully think over, discuss and freely express themselves on

the burning issue of “tribe”. These events should be extremely robust in election years. The prizes for the winners should be carefully thought out; they should be symbolic, valuable and meaningful. Corporates and international organisations can be invited to support the events. The winners can be organised into a “Junior Statespersons’ Group” on the lines of “Group of Eminent Persons Group”. This could serve as the nucleus of future leaders of Kenya, with no chains to their “at-birth” ethnic groups. Over time, something really great like patriotism can come out of such socialisation.

- v. Teaching, respecting and promoting the cultures of other ethnic and racial communities.
- vi. Providing for the development of stories by indigenous authorship and their translations into English and Kiswahili.
- vii. Teaching conflict prevention to the youth by building their capacities in critical skills such as on recognising conflict triggers, negotiation, mediation and conciliation. Young people need to leave school with the knowledge of the history of ethnic and racial conflicts in Kenya; causes, origins, factors contributing to inter-group violence and methods of prevention.
- viii. Teaching practical skills on how to deal with racism and ethnicism in school, embracing diversity in the school, cultural competency and skills for cross-cultural examination and characteristics and skills of effective inter-culturists.
- ix. Teaching social inequality; trends, patterns and impact on national unity and development, the roles of civil society, traditional authorities, youth associations and the media in national cohesion and integration.

Educational policies in Kenya in the past have tended to sometimes highlight the aspirations of the majority, whose interests are sometimes treated as synonymous with national aspirations. Wider affirmative action policies are required for the minorities such as the El Molo, Kenya’s smallest ethnic community, to help them catch up with the rest of the communities or the rest of the country, in the form of ethnic quotas for secondary school and university education.

In response to requests by educators, I have since written a manual titled *Beyond Ethnicism: Exploring Ethnic and Racial Diversity for Educators*. The manual, a first of its kind in Kenya went through all the stages of review by the Kenya Institute of Curriculum Development (KICD) and the Ministry of Education. On 22nd December 2015, the manual was listed in the KICD Orange book as part of the curriculum material required for teachers. It illustrates that a new approach to ethnic and racial interaction between learners, educators and parents can make a positive and significant difference towards the promotion of healthy diversity in school communities in particular and the country in general. The manual is also written to counter negative influences that lead to fear and the exclusion of others. The key message is that teachers have the power and responsibility to change for the better the thinking of their students on ethnic and racial inclusion.

(b) Political parties

Political parties continue to be largely defined by the ethnicity and personality of their leaders, ethnic power bases and lack of clearly defined and well-articulated ideology. Five of the large ethnic communities of Kenya control over 70% of the ethnic vote in Kenya. These are the Kikuyu, Kalenjin, Luhya, Luo and Kamba. The ethnic power barons – the elders – make the choice of leaders; the task of Kenyan voters is to approve their choice. Political parties took a leaf from the colonial handbook and perfected the art of divide and rule for Kenyans. They do it so adeptly that a poor person is able to vote for and identify with an ethnic leader who she/he has no common interest with (except ethnic community) and will never meet.

Broad political party representation and inclusiveness holds one of the crucial keys to supporting cohesion, integration and national reconciliation as well as avoidance of conflict during and after elections. Inclusive (or power sharing) government tends to decrease the likelihood of conflict. The ethnically diverse nature and powers of the new elective positions created in the Constitution of Kenya, 2010, will continue to have implications on promoting reconciliation and inclusivity as a guarantee of non-recurrence of violence between ethnic communities.

Kenya needs a leadership that sees that diversity and makes the country richer, rather than thrive on the ethnic divisions that propel politicians to power. Politicians should set up parties and stay within them because of the parties' ideals and plans for the country or counties and not because of the leader's or opponent's ethnicity. Civil society and *wananchi* have a duty to hold politicians accountable to their manifestos, before and after elections.

(c) Good governance

The national government must foster a sense of national identity and belonging; create the social and political space for a vibrant civil society to participate in the process of governance; advance and protect human rights, administrative justice and integrity in public life; ensure individual and public safety and security; promote inter-group harmony to reduce ethnic prejudice and discrimination and pursue socio-economic development vigorously, equitably and responsibly to enhance the overall quality of life for the people across the country in a sustainable manner.

(d) Devolution as crucial to good governance

The new system of devolved governance means that it is now almost impossible for national level post-election violence to be mobilised. Anyone wishing to mobilise violence across the country would need to seek the support of and slice through so many layers of new leadership; governors, senators, members of parliament, women representatives and members of the county assembly.

The bad news is that the power to mobilise ethnic violence has devolved and with it too, the concept of tyranny of numbers. It is now easier to mobilise sub-ethnic communities and clans to war rather than the whole ethnic community. The problem of devolution of ethnic divisions to the counties is real and worse than imagined. This has been frequently reported in the media, but the worst possible case has to be the rejection by Kenyan Counties of a total of;

“700 doctors posted to their hospitals even as the country grapples with the shortage of health workers. The Kenya Medical Practitioners, Pharmacists and Dentists Union (KMPPDU) yesterday said the health workers were not born in the counties where they were deployed. The unions accused the

devolved units of valuing ethnicity and nepotism more than the health of their people. In an interview with Saturday Nation, the union's Secretary General Ouma Oluga said despite acute shortages of health workers, ethnicity and nepotism were rife in the devolved units. "There is a big problem when counties with no doctors like Kajiado reject doctors. Counties are looking for their own: yet there are no doctors of their own".²⁸¹

Speaking of the depth of the problem at the county level, Kisumu Deputy Governor Ruth Odinga said, *"Tribalism had made it difficult for people who are not Luo or even Luo from outside Kisumu to get jobs within the county. If this issue of exclusion is not addressed, it is going to explode. The business community is suffering. I also suffer. When I talk, I am told to go back to Siaya where I was born."*

I saw it first hand when I was appointed as Commissioner in 2016 into a Presidential Commission of Inquiry into the Petition to Suspend Makueni County Government in 2016. A conflict between the County Executive and the County Assembly had catapulted Makueni County to the top in regard to conflict analysis ratings for volatile situations. Part of the problem was nepotism and ethnicism.

Administrative acts of omission often lead to the perception of ethnic and racial discrimination. Too often, government officers disregard this important fact. From the Ethnic and Race Relations policy and other frameworks, NCIC provided guidelines for counties to develop their own plans. Such plans would include cross-cultural contact such as shared markets as well as appreciation of communities for each other's differences. Setting up points at the county level to receive complaints of ethnic and racial discrimination would be a plus.

Much more emphasis should be placed on thematic approaches, rather than focusing on geographic areas. This will allow for the designing of programmes across counties to unite different communities. Thematic approaches might include, school twinning programmes, sports and art, dealing with drug abuse or alcoholism across ethnic communities, promoting literacy and lack of contact between particular communities. A range of thematic bids more flexibly applied and not limited to any arbitrary county, designed to maintain an overview of any given area, may prove to be more equitable.

The national government should ensure policy coherence of all counties and ministries and enforcement of the rule of law. It must guide discourse in, and provide leadership on the agenda of national

healing and produce context-specific conflict prevention policies that contribute to inculcating national values and promoting ethnic, racial and religious diversity in line with the Constitution of Kenya, 2010. Such policies shall help to prevent a relapse into conflict.

(e) Ensuring security for all Kenyans

The security agencies need investment in uplifting the deplorable state of police stations including the living quarters of the officers. Security operations should also focus on prevention of ethnic conflicts before they happen. Security operations after the clashes flare up are costly, time consuming and leave Kenyans with absolutely no confidence in the government's ability to protect them. The operations also create opportunities for diversion of development resources and over spending. Security fund allocations to deal with ethnic clashes eat into the budget that would otherwise go into preventive measures that include the purchase of basic tools for policemen, like reliable communication equipment and fuel for police cars that could be used to prevent ethnic violence.

(f) Ethnic audits

Ethnic audits and corrective measures will remain essential to pacify communities that feel excluded and also ensure ethnic harmony. These audits should be part of the normal running of the government and should be extended to the private business sector and the NGO community as well. In studying how represented ethnic and racial communities are in the Kenyan public workforce, the marked ethnic inequalities among staff can be detected and balanced.

The Public Service Commission (PSC) should carry out an ethnic audit before a new government is sworn in. Another audit should also take place in the middle of the government's term to ensure adherence to the law. The results, together with those of the final audit should be used as the base line by the next government to ensure continuous progress towards ethnic cohesion. To promote accountability in government and strong interest in the population at large; the media and civil society organisations should be courted to heighten publicity of the audit, its results, the implications of its findings and the recommendations.

(g) End economic inequities

Economic inequity and competition are important considerations in ethnic conflict. Perceptions of group worth are fundamental in explaining the nature of conflict. Perceived inequities largely contribute to the likelihood of conflict. These inequalities in terms of socio-economic advancement can be addressed. But, it is a lot more difficult to address access to and actual control of political power.

Chapter Twelve, Article 204 of the Constitution establishes the Equalisation Fund “into which shall be paid one half per cent of all revenue collected by the national government each year. It further states that the national government shall use the Equalisation Fund only to provide basic services including water, roads, health facilities and electricity to marginalised areas to the extent necessary to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation, so far as possible. So, the national government can act in the interest of raising all regions and communities of the country to similar levels of socio-economic development and avert perceptions about marginalisation.

Ethnic violence in Kenya usually targets black Africans against black Africans; particularly poor Africans against poor Africans. The poor African sees life from a narrow prism of the person who is most economically similar to him. People with widely dissimilar economic status tend to have fewer opportunities to meet and are unlikely to want to network and interact. Opportunities for face-to-face contact between the rich and the poor can be provided through raised incomes among the poor, which will increase the likelihood of the duo attaining social cohesion as income disparities narrow.

Until the state is in a position to reduce inequality levels, and get those previously discriminated against into affirmative action programmes, poor people will continue to seek solace in ethnic gangs funded by rich people. The probability of conflict is higher where socio-economic inequalities abound. The State should ensure that the ethnic gangs do not link a religious and economic agenda to their profiles just as Mungiki did with the Kikuyu, and Al-Shabaab has done with Somalia-Somalis. Ethnic disenfranchisement, economic entitlement and religious fundamentalism are a dangerous combination towards radicalisation. Ethnic profiling

is dangerous; the solution towards ending radicalisation must involve people from within the communities that produced the fundamentalists. The concoction of poverty, conflict over land, ethnicism and political grievances should not be left to fester in a vacuum. Each of the issues, if not addressed, will spoil good progress on the others.

(b) Hate speech

The police should put in place a specially trained unit to deal with hate crime; dealing with not only hate speech but any crime that targets individuals, groups or communities because of who they are. This includes people targeted on the basis of their identity, race or religious beliefs. Hate crime is under-reported because of misunderstandings on who to report to and fear of retaliation.

Typically, the NCIC would investigate an offence and hand it over to the police to prosecute, who in turn, investigated it afresh, ostensibly to tighten the case. This meant that NCIC and the police were playing duplicating and sometimes competing roles. This bureaucracy partly explains why the NCIC was unable to stem the messages against particular religions, races or ethnic groups or stop the spread of hate messages that promote violent extremism. This means that in practice, NCIC can only have prosecuted the cases the police wanted prosecuted. The NCIC is tasked with national healing while at the same time holding, through penalties, the whip on hate speech. NCIC in cracking the whip on hate speech generates fear, which discourages and undermines its role on national cohesion and healing. Indeed the media has on occasion referred to NCIC as the ‘hate Commission’. This will remain the greatest challenge for NCIC.

(i) Impunity and corruption

In societies where ethnicism, racism and nepotism are entrenched, corruption erodes cohesion and integration. In situations where people are looking out for “their own”, it becomes easy to facilitate the pilfering of resources from the poor into the pockets of the connected. Impunity – the ability to get away with wrongdoing – in turn thrives on corrupt networks. In the long run, corruption, which is capable of triggering ethnic and racial unrest, robs the Kenyan nation of the legitimacy of being a nation of one people.

(j) Land titling and natural resource exploitation

The economic status of the country will no doubt change. The economic leadership has ensured that due to historical and geographical advantage, past progress belongs to the elite of the big ethnic communities. This is bound to change. The economic future of the country now belongs to everyone, including the marginalised areas and minority communities.

At the time of writing this book, oil and vast fresh water deposits had been discovered in Turkana, coal in Kitui, oil in Lamu, and a port was being built in Lamu, all of which are marginalised areas. These discoveries are in themselves a potential source of resource-based conflict, both between the national government and county governments and also among various ethnicities that inhabit the areas. The presence of natural resources can be a significant cause of separatist conflict. The national government must begin to invest in preventable measures to stem ethnic-based violence over resources early enough.

Many of the communities living in marginalised areas, majority of them pastoralists, tend to view natural resources such as land as God given gifts that should not be owned by any individual but by the community. The Constitution of Kenya, 2010, protects communally owned land, but the communities still lose this land to people who acquire titles. The law on communally-owned land may have been improved but implementation is still poor. Migratory communities such as those in Isiolo, who move from place to place in search of pasture seasonally usually come back to find their traditional grazing areas fenced.

There are more problems when lands are parcelled out and subjected to agrarian reform as it happened in Tana River County. The consequences are that people are reduced for lack of land titles, to mere users of their ancestral land, or illegal poachers and squatters. Sometimes, they become manual labourers on land they previously called their own. Beyond the possibility of ethnic conflict, communities lose their source of livelihoods; sacred sites and many cultures gradually cease to exist.

The needs of the marginalised people living on the rich and un-mined resources will need to be seriously taken into consideration; otherwise the mining will be derailed as a result of disputes. Sharing of future mining profits and compensation for the cost of resettlement

needs to be negotiated early enough. There is need to ensure that unscrupulous third parties do not take advantage of the situation demanding shares of the expected royalties. If this happens, delays will make costs escalate and everybody will be a loser. The investors, beneficiaries from the ethnic communities, the government and the economy will all lose. Kenya needs an efficient mechanism to reconcile cultural sensitivities, minority rights and national harmony.

(k) Unity and reconciliation

National unity and reconciliation fundamentally depends on people's values. The constitution has clear national values that have not been translated into dealing with real situations leaving many to look to their ethnic and racial communities for identity. The ability to communicate and agree on values that can govern our behaviour as Kenyans is missing from our national ethos.

Kenya's socio-political cohesion and integration as a country depends on how carefully matters of national interest are handled. There must be sustainable positive interaction in the best interests of Kenya between ethnic communities. This means that there is work to be done on national unity and reconciliation within the individual and collective values that will enable us accept each other as one people. This must continue and not be disrupted by the politics of the electoral cycle of *siasa mbaya, maisha mbaya*, bad politics, bad life.

To achieve cohesion means combining a managerial business-like view of unity and reconciliation to long term national planning and the implementation of such plans. Publicity for a national unity and reconciliation agenda is key. A critical mass of Kenyans must be made to understand that their own individual and communal success at building national unity and reconciliation can become an important inspiration to the broader society.

(l) Memory

The leadership must find ways of ensuring sharing of the memory of the past. Memory will serve as a demand on Kenyans to not only disallow the past injustices to happen again but also to force Kenya to critically re-examine and reconcile with its past painful and mostly contested truths. Museums and memorials must be expanded and built

to accommodate multiple narratives, to be preserved as public records and to ensure non-recurrence of Kenya's ethnic violence.

The leadership challenge will be in getting Kenyans to understand each other's narratives. Each community clings on to its narrative and will not accept that those others – too have a story to tell. The Truth, Justice and Reconciliation Commission documented Hussein Farah's narrative for posterity, but it is only in being understood by other Kenyans that it will become a Kenyan narrative. Kenyan historians from the leading universities could support the work on memory through research and publishing their findings.

On 19th July 2017, Lt. Gen. Daniel Opende (Rtd.) convened the Concerned Citizens for Peace again. We embarked on facilitating confidential dialogue between especially, politicians and working to prevent ethnic violence. As this book went to press, our work was still on-going. On 8th August 2017, Kenyans went to the polls. President Uhuru Kenyatta and his Deputy William Ruto as incumbents were defending their seats on a Jubilee Party ticket against an onslaught from Raila Odinga and Kalonzo Musyoka under the National Super Alliance (NASA). The IEBC declared Uhuru Kenyatta and William Ruto winners, a decision which on petition, the Supreme Court nullified, ruling in Raila Odinga's favour.

Raila Odinga however, surprised many by boycotting the new election, together with his supporters, on claims of electoral flaws that he wanted fixed before another election was held. The election went ahead on 26th October, and on 30th October, Uhuru Kenyatta was once again declared President-elect. The Supreme Court upheld the outcome of the polls and Uhuru Kenyatta and William Ruto were sworn in as president and deputy president, respectively on 28th November 2017.

The opposition refused to accept the legitimacy of Uhuru's presidency and ratcheted up discussions on secession, a boycott of consumer services and products, in particular those from companies whose owners were deemed "friendly" to the new government. They also demanded a repeat election, sought to establish people assemblies as an alternative to the incumbent government, consistently declared that they would swear-in Raila Odinga as the "people's president" unless

there was dialogue between Raila and Uhuru on electoral reforms. Such actions demonstrate the deep nature of our ethnic divisions.

As late as mid-2013, it was impossible to imagine an election in Kenya in which ethnic communities did not fight each other. In 2017, ethnic communities did not fight each other. In Nakuru, after both the August and October 2017 elections, instead of fighting, the people held an inter-ethnic sports day. However, the elections were not entirely free from violence. The KNCHR in a report alleged that the police killed 40 Kenyans, including children. Five more Kenyans died on 16th November in an attempt to assemble at Uhuru Park, at a rally that had been proscribed. In addition, 12 more people were killed during the October repeat election. The police denied the claims by the KNCHR.

Uwiano remains Kenya's most efficient conflict prevention agency. It has continued to source information through crowd sourcing and other structures, channeling it to relevant parties such as state organs and community elders for early response. This has helped prevent conflict between ethnic communities. Despite the deaths in the 2017 elections, Uwiano's role was a great improvement that helped ease ethnic conflicts. The lack of violence between ethnic communities did not however, mean that they were united. Both the August and October elections were extremely divisive.

Uhuru Kenyatta began his final term at a time when negative attitudes between ethnic and racial groups were extremely deep. To ensure a legacy, he would need to confront the norms and values that underpin exclusion and not just concentrate on developmental policies. Through this, he would address the needs of among others, the barefoot woman who inspired me as I took the position of NCIC commissioner. Uhuru and Raila would have to find a way to end the political rivalry between the Odinga and Kenyatta families that spans over 50 years. By extension, the Kikuyu and Luo ethnic communities have to agree to speak *with*, and not *at* each other with a view to ending their political differences. But most important, it is the state institutions and the people of Kenya who have to rise above ethnicism, work to bridge ethnic divides and embrace issue-based politics. Only then can we heal the ethnic cracks shaking the foundation of our nationhood.

Epilogue

This book is a personal account of my experiences as NCIC commissioner from September 2009 to September 2013. Drawing from those experiences gave rise to my quest for the notion of *Bridging Ethnic Divides in a Kenya for all Kenyans*, where, among other things, the rule of law is paramount and equally applicable to all, and where there is no discrimination of any kind including on the basis of ethnicity, religion or race.

Despite its significant economic strides, Kenya, like many other African countries, remains fragmented and mired along ethnic lines. However, Kenya is the first country in Africa to set up a national cohesion and integration commission with a specific mandate to deal with ethnic and race relations. Through NCIC, I contributed directly to moving a communally divided society, living on the brink of violence, to one in which tensions were relatively well managed. NCIC however did not work in a vacuum. Our successes had to do with particularly favourable conditions, such as a parliamentary committee's that listened to us. A national cohesion and integration body points to commitment of a shared future of working with Kenyans to find ways of cutting across differences, hostilities, divergent perceptions and contestations commonly inherent in relationships among human beings. Issues of identity provide a basic starting point of departure in this discourse.

What does a Kenya for all Kenyans look like? Unless a people have a clear sense of who they are, and a firm knowledge of where they are coming from, navigating challenges of the present as well as envisioning a future of hope and promise is always an unmistakably daunting task. The immense potential that exists in Kenya as an economic power house, incredibly resilient, and high achieving people must be mobilised to guarantee non-recurrence of ethnic violence and harnessed towards justice, national cohesion, reconciliation and integration. A greater sense of citizenship that places a higher value on celebrating diversity can be built, based on a few common principles and values, shared

and observed by all Kenyans. The ethnicism crisis that we face should not paralyse us to the extent that we cannot see beyond it; consistently chipping away at it will in the end deliver dividends.

In this regard, the Constitution of Kenya, which came into force in August 2010, serves as a good foundation and a bold step forward. In terms of cohesion and integration, of particular importance are the following provisions; Chapter Four on the Bill of Rights, Chapter Six on Leadership and Integrity, Chapter Seven on Representation of the People, Chapter Ten on the Judiciary, Chapter Eleven on Devolved Government and Chapter Twelve on Public Finance. The running thread throughout these provisions is an affirmation of the Kenyan citizen. This is very important, as citizenship is an important source of political and economic exclusion. The Constitution should serve as the diving board that should propel Kenya to levels of working out ways of moving from the legacy of colonial rule. This means dismantling the systems of ranking that the colonialists created placing some ethnic communities or some people within them in dominant political and economic positions. These inequalities, maintained and even promoted by post-colonial Kenya fuelled the fire of ethnicism.

Despite its fair share of inter-ethnic difficulties, Kenya does have immense possibilities to create a nation out of the many distinct ethnic and cultural communities. Tensions in ethnic relations that frustrate and complicate the process of cohesion and integration, as shown in the work NCIC did, can be contained. Ethnic nationalism continues to challenge in its construction of ethnic identity as a counter ideology to NCIC's work. Working within two such crucial years saw the highly emotive character of ethnicity mobilised politically. The Constitution of Kenya, 2010, provides a response to Kenya's historical injustices, and therefore, as much focus as possible should be on building that shared and better future, the one it envisages. This shared future will make all Kenyans feel they live in a world of abundance and promise rather than in one of scarcity, a shared future that promises practical hope.

The post-election violence of 2007/08 was indeed our darkest point. So many people willing to change exist, and that is the game changer on the issue of ethnicism. We are no longer where we were as a country

in 2008. In 2011, I had attended a prize giving ceremony that brought together more than 2,000 nurses. The nurse who prayed on everyone else's behalf astounded me by praying that God should forgive nurses like himself because they allowed people from ethnic communities, other than their own to die of post-election violence wounds. We had sunk so low as a nation. However, despite our ethnic differences, it is usually clear from, say, the support of Kenyan athletes across ethnic communities that Kenyans want to belong to Kenya. Kenyans do want to live together but in a framework that produces equal opportunities for everyone. It is impossible to isolate Kenyans on the basis of race or ethnic identity.

Cohesion and integration, which is what NCIC had tried to do for four years, required political will, as well as other processes such as ending inequalities, rewriting of history to accommodate everyone, and creation of a culture of Kenyan-ness such as it happened in Tanzania with Kiswahili. The constitution provides ways of reducing social and cultural exclusion. The biggest problem therefore remains exclusion. So long as some communities feel excluded, and with good reason, Kenya will always be divided.

* * *

The field of ethnic and race relations in Kenya is vast and worthy of tons of research. The more I write, the more I realise how much more I need to know. I now know first-hand the wisdom of Socrates who said that knowledge made him more aware of his ignorance. I was humbled by the amount of knowledge ordinary Kenyans have on the topic, sometimes just because as a human being, everyone has an experience on ethnic and race relations. Now when I meet Kenyans in the streets of Nairobi or in the market in Mandera, I always wonder what their experience with ethnic and race relations is, and if it will ever be told.

Kenyans must move from the politics of grievance to the politics of aspiration and realise that for good politicians, there should be no ethnic community or clan politics. Much of the effort needed to ensure the success of cohesion and integration must come from Kenyans themselves and a continuation of the proposed recommendations in the KNDR. Full implementation of the security sector reforms as proposed in the KNDR agendas, for example, are essential to avoid

destabilisation in future.

The tension between the two worlds I have inhabited of human rights and peace building, mainly translated through the lens of justice and peace, will continue to coexist. This is a consequence of the history of Kenya. The key task will be to ensure that the ethnic animosities in Kenya do not mutate into a more dangerous form. This is an argument anchored in the dictates of the Kenya we live in. Cohesion and integration, as the people of Isiolo told us during the Diversity Conversations, is an evolution and not a revolution. Cohesion is, indeed, a lifelong quest.

Annexes

Annex 1: Peeling the Kenyan Conflict Onion: Needs not positions; development, security and human rights our priorities in post-conflict reconstruction

The 34-44-40 cabinet debate is an ominous pointer to what our politicians consider priorities; positions and not needs. Yet our needs are the embers, which opportunely stoked, ignite into conflict. Kofi Annan argued as UN Secretary General in 2005 that we cannot enjoy development without security, security without development, and we will not enjoy either without respect for human rights and that unless all these causes are advanced, none will succeed. These are needs, not positions. He repeated this statement when he came to Nairobi to mediate. What does this statement have to do with our post-conflict priorities? Let us use a human rights education training method on analysis, the conflict onion to understand what he meant. To do so we have to peel the onion together.

Experience teaches us that in peaceful situations people relate and act on the basis of their actual needs (what we have to have). The lack of basic access to must have needs lays the basis for the presence of structural violence characterised by resentment that does not necessarily translate into open conflict. As instability rises, people coalesce around collective interests (what we want) rather than needs. With the escalation of the conflict people then withdraw to certain positions (what we say that we want). The positions we then demand at this point and as a part of conditions for peace deals have their roots in the dynamics of the conflict but have little to do with actual needs.

In Kenya, the needs are the core of our onion, the first ring of the onion the interests and the outer ring of the onion the positions. Let's peel the outer ring. What are the politicians saying that we want? Positions in Government for all parties; because this is the only way for everyone to benefit, and guarantee peace. Let's peel the second ring – But what are our interests? What do we want? Equality and non-discrimination on all fronts especially ethnicity, disability, gender and

equitable access to resources, participation and inclusion, accountability and the rule of Law. The interests are in their totality human rights based approach to development principles.

Let's now take the core of the onion apart. What must we have?

We urgently need roads in good conditions; to markets for our produce, to a hospital with medicine, to a school with teachers and books, to a water point. We need security. We need leaders we can speak to who will listen just as we do as they address political rallies and religious gatherings. We need the IDPs resettled, MPs' salaries reduced and our taxes manageable, we must have an end to impunity and a Truth, Justice and Reconciliation Commission.

We must have support for arts and sports and debunk the myth that education is the only way out of poverty for our youth. Catherine Ndereba, Paul Tergat, the athletes and Tony Nyandundo the musician did not hone their skills in examination rooms. We need to afford maize flour, Unga, and get direct benefits for the cane and coffee farmer. We must have our textile industry back on its feet again. We need opportunities for the neglected North Eastern Province. We must have massive land education initiatives similar to the HIV-Aids campaigns at the community and policy level. We need well remunerated doctors, nurses, university lecturers and law enforcement officers. We need jobs for our youths.

Peeling onions is a tear shedding business so let's ask the loaded question; to what extent is the creation of a bloated cabinet based on prioritising of positions truly suited to promoting Kenyans' needs and interests? Numbers do not mean delivery of services to meet our needs. Kenya's post-conflict reconstruction will be founded on the basis of solutions to needs and well-understood interests, not political positions.

Granted; conflicts do undergo transformations that have nothing to do with the original reasons such as the need for self-protection, revenge or the economic or political opportunities offered by the conflict. But working out the conflict issues (at the level of the various positions and interests) and the conflict causes (at the level of the interests and needs) from wherever you stand will help us all examine

our own positions and assist us gain an understanding of the interests and needs of the other side. This will help us lay the foundations for the permanent resettlement of the IDPs hand in hand with enforcement of the rule of law.

Try it. You will be surprised that our original needs are in fact perfectly compatible with each other and that in fact positive peace encompasses human security, stability and development as needs, not positions as priorities to guarantee peace.

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Annex 2: Demilitarise, demobilise and reintegrate armed militia

DAILY NATION
Wednesday April 2, 2008

NEGATIVE PEACE?

ALICE NDERITU

Demilitarise, demobilise and reintegrate armed militia

TODAY, KENYA IS ENJOYING negative peace – which just means the absence of war but not the presence of justice.

Let's face it. Militias ranging from Kalenjin warriors to the Mungiki and the Sabaot Land Defence Forces are composed of men (and sometimes women) who are looking for a cause which will provide a vent for their anger over real or imagined social inequalities.

Most of them are usually from poor backgrounds with no chance of formal employment. Prior to the signing of the peace deal, all signs on the ground pointed at the building up of militarised societies, with youth forming the backbone of the rearming process. So where are they today?

With the signing of the peace deal, some have been arrested on post-election related violence offences while the majority retreated to their previous occupations or to their villages as "sleepers" ready to be called for action in the event that the peace deal falls through.

AND, OF COURSE, THERE ARE DANGERS of the "sleepers" getting out of control and proving difficult to rein in.

Consider, too, that for two long months, the militia led a life where they called the shots, with many enjoying positions of respect from people they "protected" – respect they cannot hope to attain again as touts, farmers, butchers or farmers that they have since reverted to.

Then again, we are expecting too much to assume that people we allowed to kill, loot and maim will now become law-abiding citizens.

Granted, due process in bringing alleged perpetrators to justice must take its course, and I am not in anyway advocating for murderers to get away with election-related violence. But we know our



Members of the Sabaot militia address the press: Who will disarm and then rehabilitate these young people ?

country; the wheels of justice grind very slowly, and realistically, we have to ask how many people the already overcrowded prisons can accommodate anyway.

In a country emerging from conflict, the generally accepted actions that need to be taken before peace and reintegration programmes begin include a ceasefire, peace agreement, political commitment, establishment of Truth and Justice Commission, accompanied by seeking international financial support.

In Kenya we are now at step three, but I have not heard of the establishment of a formal plan to disarm, demobilise and reintegrate the militias as the final step of our process.

Humanitarian organisations work to protect civilians and internally displaced persons as negotiators work with the parties in dispute to reach a compromise that will bring about peace.

Once having reached a formal cessation of armed conflict, the disputants negotiate the terms of a peace accord that addresses the needs of all the parties involved.

In cases where a peace enforcement

operation is established, the practical aspects of the demobilisation, demilitarisation and re-integration (DDR) programme, is planned and continues into the recovery stage of peace building operations and into lasting peace.

Kenya may not need peace enforcers but a DDR programme is an essential part of our post-conflict reconstruction.

The military's tasks include demobilising, disarming and destroying the arms, while civilian organisations are involved in the reintegration of not only the militia, but also the conflict-affected.

The first two months of this year in Kenya exposed serious shortcomings in the capability of our law enforcement agencies to deal with the militia. We need DDR, not just to contribute to post-conflict reconstruction, but also as part of our national security sector reform.

CONSIDER THE MT ELGON SITUATION. The military would not have succeeded if all they did was to clobber the militia. An amnesty was offered by the Government last year, but it obviously failed to work as a solution on its own. The solution has to be part of an overall DDR programme in which the militia are disarmed not as a short-term solution but as a process that is essential for sustainable peace and development.

We must have a base for our post-conflict plans that accommodates DDR as part of the four pillars of post-conflict reconstruction: security, governance and participation, social and economic well-being, and justice and reconciliation.

Short of this, in 2012 or before, the "sleepers" will be awakened, and this time Kenya may not survive.

Ms Nderitu is a senior human rights officer, Kenya National Commission on Human Rights (anderitu@knchr.org)

Annex 3: NCIC's message (specifically drafted for the principals, President Kibaki and PM Raila



MESSAGE FROM H.E. HON. MWAI KIBAKI, CGH, MP, PRESIDENT AND COMMANDER IN CHIEF OF THE ARMED FORCES OF THE REPUBLIC OF KENYA AND THE RT. HON. RAILA ODINGA, EGH, MP, PRIME MINISTER, DURING THE COMMEMORATION OF THE SECOND ANNIVERSARY OF THE SIGNING OF THE NATIONAL ACCORD ON 28TH FEBRUARY, 2010

Fellow Kenyans,

Today marks the second Anniversary since the signing of the National Accord on 28th February 2008. This day will forever remain an important turning point in our country's history. On this occasion, we would like to thank God for His mercies and the people of Kenya for their support, resilience and determination to co - exist peacefully.

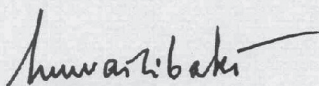
As the two signatories of the National Accord, we pledge to the people of Kenya that we will do everything within our powers to safeguard peace in this country. We recognize that coalition governments, the world over, by their own nature, present many challenges. However, despite the differences of opinion that are likely to arise from time to time, the Grand Coalition is fully committed to serving Kenyans and improving their living conditions as promised.

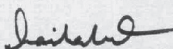
The Government has put in place a broad national reform agenda. The expected reforms are intended to entrench a culture of democracy, rule of law and development in our country.

Most importantly, we are pleased to note that the journey towards a new constitution is firmly on course. In this regard, we call upon Parliament to seriously deliberate on the Draft Constitution and avail to this country a document which will be supported by a vast majority of Kenyans during the forthcoming referendum.

We wish to dedicate the 28th of February as a day of National Unity and Thanksgiving. We ask Kenyans to give thanks to God Almighty for our beloved country this Friday, Saturday and Sunday in their respective places of worship.

Thank You and God Bless You.


H.E. HON. MWAI KIBAKI
PRESIDENT


RT. HON. RAILA ODINGA
PRIME MINISTER

Annex 4: We have little choice but to penalise hate speech

WORLD IS WATCHING
ALICE NDERITU

We have little choice but to penalise hate speech

DLINE POSITIONS, HATE speech, violence, ethnic and religious tensions witnessed the 2005 referendum which rehearsal for the 2007 elections, might be used to form is for the referendum.

Kenyans died or were injured during both the referendum campaigns, and after were announced.

In the past few weeks, hardline proposed constitution have been discussed. Since Kenya is a democracy each of us have got a right to express our opinion, we have to reckon with the possibility that a consensus on the proposed law will be reached.

Does this portend for the referendum? Given the ethnic undercurrents in our political discourse, the likelihood is no doubt take on the hue of race divisions.

THE 'POSITION' IS A LINGUISTIC one that, in reality, masks itself as genuine and imagined. It has a history of articulating on tribal or religious lines, and dialogue for violence.

The Kenya trying to build a nation and rebrand itself, and the 2007/08 wounds still raw, the may increasingly get to sound bites, and not contributions to a dialogue on the constitution.

Peace prevails and Kenyans individual and collective responsibility for their utterances and actions, should be the next theatre of coming-up to, and during, the referendum process and methods we



Delegates during last Monday's national cohesion and elders conference

A lot can be done on the process to ensure a smooth referendum both at individual and collective levels. The campaign provides perfect emotional fodder for hate speech. Emails and text messages that characterised the emotional build-up to the electoral violence in 2007 are doing the rounds again, especially on religious positions.

The National Cohesion and Integration Commission will defend the right of every Kenyan to express himself or herself. However, we have issued, and shall continue issuing, notifications and summons on hate speech in regard to ethnic and race relations.

Hate speech includes uses of threatening, abusive or insulting words or behaviour, or displays of any written material with the intention of stirring up ethnic hatred.

Ethnic relations are defined in the NCIC Act to include racial, religious, tribal and cultural interactions between various communities. It is also an offence for media organs to publish or air hate

ensure that we lay a solid foundation for cohesion and integration by recognising the ability of Kenyans to co-exist without violence. It is not our intention to disguise ethnic differences and identities in our search for a national identity.

Our engagement arenas in the referendum include meetings and a national conference that will bring together our political parties and leaders as well as leaders from Rwanda, Uganda, Ghana and dialogue on the process, not the draft, next month.

We are involved in a lot of scenes of diplomacy with political faith-based leaders on the process is important: For every Kenyan remembers the content of the constitution there are 100 who remember the violence, the politically correct lies and the ethnic slurs.

THIS REFERENDUM DOES NOT have to be divisive – its process has the potential for inclusivity as we participate in decision-making for Kenyans. We must plan with the mind and narrow down the leadership to include individuals.

That way, we shall have built a mass of people willing to co-exist in a peaceful referendum and that is an important step towards building a new identity as a country that holds a referendum.

How we relate to each other during this campaign period will show our ability to seek a nation especially in regard to other essential milestones that dot our landscape in 2012. The world is watching.

Annex 5: Peaceful polls will depend on how we implement the new Constitution

DAILY NATION

Thursday August 19, 2010

NATIONAL COHESION | Alice Nderitu

Peaceful polls will depend on how we implement the new Constitution

It is evident that deep-set resentments over unresolved historical grievances and religious, ethnic, cultural differences provoke violent conflict among Kenyans.

Initiatives such as the Uwiano platform for peace, community peace caravans, good neighbourliness, diplomacy and conflict preventative policing provided for a peaceful referendum.

District peace committees, peace and conflict management non-governmental organisations, UNDP, the Provincial Administration and the Kenya Police came together to exchange information at the grassroots, supplying early warning conflict indicators and leading to rapid response by the police.

The Uwiano rapid response SMS system 6397 received thousands of messages that were analysed and handed over to the police for action within hours – sometimes minutes.

The peace interventions during the referendum prioritised the parts of Kenya affected most by the post-election violence, and for good reason as evidenced by the huge number of hate leaflets, emails, hate speeches and ethnic animosity intended to build up to violence before the referendum.

The interventions were a success; in comparison with the 2005 referendum or the



A hate message victim shows the contents to a colleague.

2007 elections, there were hardly any incidents of violence in those areas.

In the last two weeks, however, we have had violent conflicts with fatal casualties between the Borana in Isiolo North and the Rendile in Laikipia as well as between the Borana in Moyale and the Somali Ajuran clan, and also between various clans in Dujis.

These conflicts were caused by differences over access to grazing land and insecurity. Unfortunately, the referendum dominated the headlines and the deadly conflicts barely made it in the news.

Conflict is a fact of life. Violence and conflict do not mean the same thing because conflict involves choices that include interventions before it becomes violent.

We must now join hands to work towards the kind of interventions that promote community ownership of peace and quick responses by police in those parts seen as “conflict-prone”.

The new Constitution presents opportunities to draw up specific, structural interventions that address the issues that bring about violent conflict.

However, we need to be alive to the fact that the different socio-cultural and religious systems among Kenyans may contribute to the irrational animosities that fuel violence as we grapple with implementing our new Constitution.

These discussions need to happen alongside peace building and conflict management initiatives with a strong emphasis on community ownership of sustainable peace.

Current peace initiatives involve district peace committees and community-based organisations working to address inter-district conflicts, disarmament and promotion of peaceful elections. The new counties require peace committees too.

A peaceful constitution implementation must be assured through measures such as promoting rational utterances on ethnicity and religion, promoting inter-ethnic dialogue as well as activities that promote

positive ethnicity, cultural and religious diversity.

In the long term, the new Constitution will have to address the factors that precipitate divisions, particularly while drafting the laws forming counties.

They include inequalities, community marginalisation, inequitable access to resources, socio-cultural misconceptions and prejudices.

In addition, implementing the new Constitution hinges on whether we can internalise our civic duty of holding accountable people within and without our communities who seek legitimacy by stoking war, and those who benefit from supplying weapons.

From our success in managing a peaceful referendum, we have a foundation to build on to ensure peace in the 2012 elections. At the National Cohesion and Integration Commission, we are taking measures to consolidate cohesion and integration in all aspects, especially in the promotion of equal opportunities, equitable distribution of resources, and creation of national political institutions and processes.

Ms Nderitu is a commissioner with the National Cohesion and Integration Commission of Kenya (anderitu@cohesion.org.ke)

Annex 6: Kenyan Ethnic and Racial communities

Kenya (so stated)	Mijikenda (so stated)	Kenyan-Somali (so stated)	Ilchamus
Basuba	Boni	Ajuran	Njemps
Embu	Chonyi	Degodia	Borana
Kamba	Dahalo	Gurreh	Burji
Kikuyu	Digo	Hawiyah	Dassanech
Kisii	Duruma	Murile	Gabra
Kuria	Giriama	Ogaden	Galla
Luo	Jibana		Gosha
Walwana	Kambe		Konso
Maasai	Kauma		Orma
Mbeere	Pokomo		Rendille
Meru	Rabai		Sakuye
Nubi	Ribe		Waat
Samburu	Waata		Galjeel
Taita	Swahili (so stated)		Kenyan Arabs
Taveta	Amu		Kenyan Asians
Teso	Bajuni		Kenyan Europeans
Tharaka	Chitundi		Kenyan Americans
Turkana	Jomvu		Isaak
	Munyoyaya		Leysan
	Mvita		
	Ngare		
	Pate		
	Siu		
	Vumba		
	Wachangamwe		
	Wafaza		
	Wakatwa		
	Wakilifi		
	Wakilindini		
	Wamtwapa		
	Washaka		
	Watangana		
	Watikuu		
	Kalenjin (so stated)		
	Arror		
	Bung'omok		
	Cherang'any		
	Dorobo		
	El Molo		
	Endo		
	Keiyo		
	Kipsigis		
	Marakwet		
	Nandi		
	Ogiek		
	Sabaot		
	Samor		
	Senger		
	Sengwer		
	Terik		
	Tugen		
	Pokot		
	Endorois		
Luhya (so stated)			
Bakhayo			
Banyala			
Banyore			
Batsotso			
Bukusu			
Idakho			
Isukha			
Kabras			
Kisa			
Marachi			
Maragoli			
Marama			
Samia			
Tachoni			
Tiriki			
Tura			
Wanga			

Annex 7: Census results

S.NO.	ETHNIC GROUP	POPULATION CENSUS 2009	POPULATION %
1	Kikuyu	6,622,576	17.7
2	Luhya	5,338,666	14.2
3	Kalenjin	4,967,328	13.3
4	Luo	4,044,440	10.8
5	Kamba	3,893,157	10.4
6	Kenyan-Somali	2,385,572	6.4
7	Kisii	2,205,669	5.9
8	Mijikenda	1,960,574	5.2
9	Meru	1,658,108	4.4
10	Turkana	988,592	2.6
11	Maasai	841,622	2.2
12	Teso	338,833	0.9
13	Embu	324,092	0.9
14	Taita	273,519	0.7
15	Kuria	260,401	0.7
16	Samburu	237,179	0.6
17	Tharaka	175,905	0.5
18	Mbeere	168,155	0.4
19	Borana	161,399	0.4
20	Suba	139,271	0.4
21	Swahili	110,614	0.3
22	Gabbra	89,515	0.2
23	Orma	66,275	0.2
24	Rendille	60,437	0.1
25	Kenyan Asian	46,782	0.1
26	Kenyan Arab	40,760	0.1
27	Burji	23,735	0.1
28	Gosha	21,864	0.1
29	Taveta	20,828	0.1
30	Nubi	15,463	0.01
31	Dassanech	12,530	0.01
32	Njemps	5,228	0
	TOTALS	37,499,089	99.92

Annex 8: Reflections on SK Maina: The father of Kenya's peace

Special Report | II

TRIBUTE | The little known man who averted numerous conflicts

Reflections on S.K. Maina: The father of Kenya's peace

In death, he brought together Muslims and Christians in the most unlikely of places

BY ALICE WAIRIMU
NDERITU

Mourners who gathered at the Don Bosco Catholic Church in Nairobi for a requiem Mass for S.K. Maina, known to many simply as SK, were struck by one fact.

Although, as expected, many top government officials attended, notable was the number of Muslims packed in the church.

At a time when communal relations between Christians and Muslims, especially after the Garissa University College attack, have deteriorated significantly, it was inconceivable to many that a Muslim would be found in a church or a Christian in a mosque.

Who then was SK and why did his death bring Muslims and Christians together in the most unlikely of places?

In life, SK brought together people in conflict for decades. At the time of his death, his office was managing more than 200 peace committees at the sub-county, ward and village levels in Kenya's conflict hotspots.

SK headed the National Steering Committee on Peace Building and Conflict Management, simply abbreviated NSC, which he built from scratch.

The NSC is a quietly efficient government inter-agency committee — the only one of its kind in Kenya — that brings together stakeholders to consolidate efforts geared towards peace building and conflict management within and on the borders of Kenya.

The NSC is largely uncelebrated yet Kenya cannot do without it. The committee works quietly behind the scenes through its early warning early response system to avert ethnic and religious conflicts.

They do this through collecting, verifying and analysing data in a systematic manner and disseminating relevant information to government and national actors for response.

SK joined the public service in 1980 as a district officer. He

served in Nyanza, northeastern and eastern Kenya. The urge to find a solution to the conflicts by ethnic communities and clans in northeastern Kenya drew him back, again and again like a moth to a light, to that region.

The history of northeastern Kenya, like other remote border regions, is one of neglect at the hands of successive authorities — first by the British colonialists. This left a massive security gap, with law enforcement agencies based hundreds of kilometres away.

Part of the solution came after a conflict between clans over water and livestock in 1993 that claimed 1,500 lives in Wajir.

A group of women in Wajir led by the then headteacher of a local school, Dekha Ibrahim Abdi, started a peace initiative shuttling between the warring parties. They drew their inspiration from the traditional dispute resolution mechanisms such as the *Alfiyah* Council of Elders in Wajir.

The informal group ultimately became the Wajir Peace and Development Committee that brought together traditional leaders, government security officers, parliamentarians, civil servants and Muslim and Christian religious leaders.

This was the genesis of a much researched, celebrated and touted phenomenon that many Kenyans do not know originated locally, has been replicated in hundreds of countries and studied as best practice in conflict resolution worldwide — the District Peace Committee (DPC).

Dekha's efforts were, however, inadequate. The NSC was established in 2001 to provide a national peace framework for both State and non-State actors to work together and avoid duplication.

However, to manage the wider conflict beyond Dekha's district, the NSC needed to facilitate a bigger community peace agreement. This would take into account the fact that the "government" was too far away from northeastern Kenya.

The Modogashe Declaration of 2001, named after the town where it was formulated, is the most famous of the tens of agreements facilitated by the NSC that govern the north in places that law enforcement officers have trouble reaching.

The NSC put in a lot of effort until the reality of the post-election violence hit the rest of Kenya in 2008.

When former UN Secretary-General Kofi Annan arrived in Nairobi to solve our problems, some of the first people he consulted were Dekha and SK.

Through the efforts of SK and Dekha, the Kofi Annan Accord formalised the establishment of DPCs in Kenya.

In the run-up to the 2010 referendum on the constitution, the NSC, National Cohesion and Integration Commission, more than 500 NGOs under the PeaceNet Kenya umbrella and the United Nations Development Programme, came together to establish a platform for peace, dubbed Uwiano, with SK and myself as co-chairpersons.

“

The NSC is a quietly efficient government inter-agency committee, the only one of its kind in Kenya”

Author

Uwiano included online tools and features for tracking, reporting and retrieving evidence of hate speech, incitement and other forms of violence investigation in text, images, voice and video.

SK and I would often speak of the need to ensure that never again would a Kenyan say: "I knew the attackers were coming but I had no-one to tell who could take action."

When sadly, Dekha was involved in an accident that later took her life in 2011, it was SK and North Eastern PC James Ole Seriani who helped move her from Garissa to Nairobi.

SK was a man whose quiet, unassuming manner was driven by humanitarian values with the ultimate goal of preventing violent conflict and improving security.

These are the values that Head of Civil Service Joseph Kinyua, Interior Cabinet Secretary Joseph Nkaissery and Principal Secretary Monica Juma talked about at Don Bosco Church.

The Muslims in the congregation knew he was a hero worth going to a church for.

The writer is a former commissioner of the National Cohesion and Integration Commission



FILE | NATION

S.K. Maina whose mission was to end conflicts in north and northeastern Kenya

Annex 9: Building peace one brick at a time

22 | Sunday Review

SUNDAY NATION
January 27, 2013

OPINION | Alice Nderitu

Building peace one brick at a time

Leaders must focus on a critical mass of factors that bond people together

Kenyans are inundated with peace initiatives launched in readiness for the elections. This is a good thing. As ethnic polarisation increases, the question many Kenyans are asking is, beyond preaching peace, marathons,

musical concerts and peace-themed beauty pageants, what do we do? How do communities own their peace? What can we demand of our political leaders to ensure a conflict-free election?

The root cause of our ethnic problems is poverty across ethnic lines coupled with real or perceived inequality between ethnic groups that the political class is so wont to take advantage of to whip up 'ethnic nationalism'.

Ethnic tensions are therefore a symptom of the problem not the cause. Despite the numerous efforts by National Cohesion and Integration Commission (NCIC) that have included brokering several community social contracts to ensure inclusion, identifying

opportunities in employment in public service for marginalised communities, ending of the education quota system, leading nationwide dialogues on ethnicity and drafting Africa's first ethnic and race relations policy, among many other initiatives, it will take a considerable amount of time to get Kenyans to a situation in which cohesion is tangible.

In the circumstances, to secure peace at the community level, it is wise to work with the do-no-harm principle on the premise that in every conflict there are factors that separate people from each other - dividers - and factors that bond people together - connectors. The experience of the 2007-08 violence means that for a peaceful pre- and post-election period, Kenya must build a critical mass of connectors. There is still time to do so.

The connectors

Leadership is always a key connector. Conflicts are not transformed by agreements alone; commitment to address ongoing problems through political will is needed. Presidential aspirants must lead by spelling out to Kenyans practical steps by their political parties in plans towards ensuring conflict prevention and dealing with the consequences of political violence, county by county.

Spaces that Kenyans meet in that are not defined by ethnicity must also be utilised to ensure an ongoing conversation. These spaces include work places, parents' teachers associations, chamas, agricultural and livestock meetings, neighbourhood associations, churches, mosques, and temples. These spaces can also be used to build understanding between people with diverse perspectives.

Dialogue is a powerful connecting tool to build bridges that can begin a conversation resulting in the realisation that the 'other' is not an enemy but a human being with the same aspirations, needs and priorities for their families.

Without communicating with each other, Kenyans will continue to demonise the 'other' in their homes, at dining tables and friendside conversations.

Civil society connects by cutting across all ethnic communities. There is an old and well developed tradition of peaceful protest and non-violent direct action that



“

Positive visions and positive messages are crucial at this point"

Alice Nderitu

channels conflict through peaceful processes.

This is a powerful resource for civil society and wanjanchi expression as famously demonstrated by Mahatma Gandhi in ending colonial rule in India and Martin Luther King in the civil rights movement in the USA.

This form of protest needs to be maximised now towards political parties that do not have clear agendas towards conflict prevention and for a movement of connectors. Political parties that have not already done so need to formalise political inclusion through power sharing arrangements that ensure inclusion of minorities, both ethnic and religious.

Reconciliation is a connector and a powerful mechanism for dealing with conflict transformation and prevention. There exists a critical mass of Kenyans willing to reconcile. Religious and political leaders from all faiths must create momentum for societal reconciliation, despite the absence of justice.

In Australia, thousands of Aboriginal children were forcibly separated from their families and it was recommended that the nation hold a "Sorry Day" to acknowledge the wrongs done.

The day was celebrated across the country with thousands of events opening the door to healing and acts of reconciliation from both sides. Religious and political leaders need to lead us on in a national "Sorry Day" at Uhuru Park and in churches, mosques and temples across the country.

Trust in the media connects across ethnic communities. The ability of the media to set a compelling agenda for conflict prevention will be a significant force in shaping political response to key structural problems that fuel ethnic differences.

Positive visions and positive messages are crucial at this point. All these are not possible without the key connector, which is respect for the rule of law.

The writer is a commissioner with the National Cohesion and Integration Commission. Views expressed here are her own.

7

The number of key connectors needed to foster peace

Annex 10: How counties can ensure lasting peace

32 | Review

ELECTION SPECIAL

SUNDAY NATION
March 3, 2013

AFTER THE ELECTION | Alice Nderitu

How counties can ensure lasting peace



Steps taken can include disarming residents and applying the rule of law

“ The challenge after tomorrow's election will be to stop any violence that flares up from spreading “

There is no doubt that we shall have a peaceful election. There will probably be demonstrations but that should not be confused with organised violence.

The reasons to expect a peaceful election are many. They range from the feel good factor brought about by pastor David Owor's reconciliation meeting and other prayer rallies, to the humanising and open discussions by the presidential candidates during the televised debates.

The many collaborative measures between organisations geared towards gathering information on early warning signs, which were not in place in 2007, have also helped.

One such example is the Uwiato platform for peace that brings together six organisations – the Independent Electoral and Boundaries Commission, the National Cohesion and Integration Commission, the National Steering Committee on Peace Building and Conflict Management, the Kenya Police, UNDP and the civil society network Peace-net.

Five years ago, many people said they expected there was going to be violence but did not know who to tell. During the referendum of 2010, Uwiato spotted links between early warning signs and early response. The referendum was peaceful.

Uwiano has now strengthened its coordinated response to include humanitarian agencies. It has also devolved to the counties and guarantees a quick response to emerging problems.

The police did a commendable job during the recent party nominations. They appeared comfortable with the psychology of crowd control, which saw them allow voters to demonstrate without resorting to violence.

The faith by political parties in the judiciary's ability to resolve electoral disputes expeditiously is a huge plus. The presidential candidates signed NCIC's Kenya Kwanza charter where they promised to abstain from violence and the IEBC's code of conduct. A team of local mediators

led by Mr Daniel Opande is ready in the event of a fallout to negotiate an amicable solution.

We are obligated to prevent the outbreak, spread or recurrence of conflict beyond March 4 in the counties.

Factors and conditions that contribute to violence – the so-called aggravators – heightened the intensity of the conflict and counties must address the triggers that create hotspots. Findings of the Truth Justice and Reconciliation Commission will assist in identifying many of these factors.

In the same context, factors and conditions that help to moderate conflict exist.

These include transitional commissions, faith-based groups, civil society and community mediation teams that will work towards easing tensions that arise due to festering problems between county and national governments.

The challenge after tomorrow's poll will be to stop any violence that flares up from spreading. Each county will need to lead its own conflict prevention strategy and the national government must step up support for county and national cohesion.

Priorities would include supporting of fact-finding missions on each county's cohesion status, diplomatic interventions to manage political fallout and official and non-official

TID BIT

They can nurture feeling of inclusion

Counties can set up and support peace committees.

Counties can promote inclusion along clan, ethnic and religious lines and nurture a feeling of inclusion.

Counties should embrace and strengthen the criminal justice system.

2010

Year when the referendum was held

Counties need to invest, with the



EMPHASIZING NATION

The reasons to expect a peaceful election range from the feel good factor brought about by Prophet David Owor's reconciliation meeting and other prayer rallies, to the humanising and open debates by the presidential candidates.

mediation efforts. The key agenda will be to focus on changing the behaviour of the fighting parties before dealing with the root causes of the conflict.

The hard work will be to address underlying causes of conflict. These are the recurring issues that identify a place as a hotspot, top of which are political exclusion, unequal access to resources and conditions that fuel insecurity such as lack of infrastructure like roads and police stations.

Addressing the deeprooted socioeconomic, political, institutional, cultural and environmental causes that underlie the symptoms of violent conflicts will determine whether a county is a hotspot or not.

Such counties must come up with long-term plans to end violence and strengthen governance. This can be achieved by setting up and supporting peace committees and promoting clan, ethnic and religious inclusion through forms of power sharing. Other measures would also include strengthening the criminal justice system and the rule of law, promoting independent media and enhancing security.

Counties need to invest, with the

support of the judiciary, on alternative dispute resolution mechanisms to manage conflict peacefully and build domestic capacity to reduce tension and link peace with justice. The national government must invest additional resources in the neglected northern Kenya that has long witnessed struggles in their search for security, inclusion, participation and acceptance.

To ensure lasting peace and grow the economy, counties must take the brave step to disarm their residents. The national and county governments must also address the needs of those surrendering arms and provide a re-integration package.

To ensure that peace holds, what the country will need after tomorrow's polls is strong political will and commitment to carry all Kenyans along as stakeholders to ensure sustainable peace.

Alice Nderitu is a Commissioner with the National Cohesion and Integration Commission and co-chair of the Uwiato platform. The views expressed here are her own.

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Kenya

Bridging Ethnic Divides

The National Cohesion and Integration Commission (NCIC) was set up to *facilitate and promote equality of opportunity, good relations, harmony and peaceful coexistence between persons of the different ethnic and racial communities of Kenya, and to advise the Government on all aspects thereof* after the violence that followed the December 2007 elections.

In *Kenya, Bridging Ethnic Divides: A Commissioner's Experience on Cohesion and Integration*, Commissioner **Alice Wairimū Nderitū** takes you behind the scenes of the NCIC's efforts to ensure peaceful co-existence. These include working with elders, mediating confidentially between political leaders at the highest levels and co-founding and working as first Co-Chair of **Uwiano Platform for Peace**, a conflict prevention agency largely credited with leading efforts in ensuring peaceful processes during the 2010 Constitutional referendum and 2013 General elections.

The book tells of NCIC's efforts in grappling with the seemingly intractable problem of managing the negative consequence of ethnic differences on questions such as: *Why is Kenya so ethnically polarised? Why is an ethnic group the key defining factor in Kenyan politics? What hope is there for an inclusive Kenya?*

The book shows that positive policies and intra- and inter-ethnic spaces can be used to counter negative influences that lead to fear, exclusion and violence. The diversity of Kenya's ethnicities and races need not be a pretext for conflict, but a source of truly national identity. It proves that dialogue on understanding differences and commonalities leads to improved relationships and understanding on societal dynamics. This in turn, contributes to preventing and transforming conflicts through appropriate inclusion policies, identifying entry points for change as well as opportunities to tackle the norms and behaviours that underpin structural disparities.

Ms Nderitū is a 2011 Transitional Justice Fellow of the Institute for Justice and Reconciliation, South Africa. Her commitment to conflict prevention and innovative approach to mediation has won her several prizes; **Woman Peace Maker of the Year** (2012) from the Joan B. Kroc Institute for Peace and Justice, the **Global Pluralism Award** (2017) and the **Jack P. Blaney Award for Dialogue** (2017-18) by the Simon Fraser University Morris J. Wosk Centre for Dialogue.

In your new job you will travel the world, and rub shoulders with important people, but it's a woman like this one [shoeless] you should be working for.

– Mrs Mwerū Nderitū

You have been writing in the newspapers on cohesion, except our work with NCIC in education. Why don't you write about our work? People need to know that we have secured our children's future.

– Mutula Kilonzo, Minister for Justice,
National Cohesion and Constitutional Affairs

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